Journal

July 1953

Diamond Jubilee Meeting . . . Boston . . . August 23-28

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JULY, 1953

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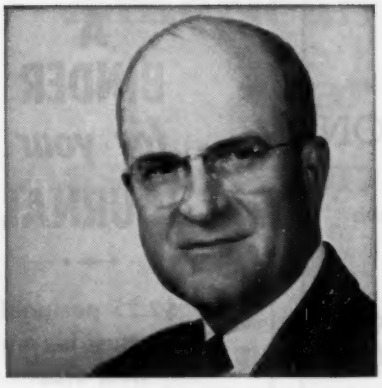

The President's Page

Robert G. Storey

■ Among important decisions and announcements at the May meeting of the Board of Governors were the following:

The resignation of Edward B. Love as Director of Activities was submitted to the Board and accepted with regret. It is Ed Love's wish to return to private practice. He has contributed much to the Association in the last two years, and our best wishes go with him. Pending selection of a successor, Noble Stephens as Business Manager and Controller will be responsible for headquarters office administration and personnel; Donald H. Remmers, Assistant Director of Activities, will assume responsibility for co-ordination work and allied Association projects, while Don Hyndman, Executive Assistant for Public Relations, will have responsibility for carrying on the Association's growing activities in that field. I feel that Noble Stephens, Don Remmers and Don Hyndman, working with our excellent headquarters staff, make a good team and we need not be rushed in choosing Ed Love's successor.

Final plans and specifications of the entire American Bar Center were approved and bids have been called for by the architects. It is anticipated that the construction contract will be signed and ground broken by the time you read this page.

The Committee on Criminal Justice, as authorized by the House of Delegates, has been appointed and all members have accepted. They are Justice Robert H. Jackson, *Chairman;* Gordon Dean, Washington, D. C., Chairman of the Atomic Energy Commission; W. Warren Olney III, San Francisco, California, Assistant Attorney General in charge of the Criminal Division of the Department of Justice; Albert J. Harno, Dean of the University of Illinois Law School; Theodore Kiendl, New York, Counsel to the New York Crime Commission; Walter P. Armstrong, Jr., Memphis, Tennessee, former Chairman of the American Bar Association's Commission on Organized Crime; Edgar N. Eisenhower, Tacoma, Washington, a practicing lawyer.

The Committee held its first meeting in Justice Jackson's office in the Supreme Court Building on May 22. The scope of research and plan of procedure were approved. The Directors of the American Bar Foundation designated the criminal justice research project as the first of the American Bar Center. It will be a long-range effort and will survive American Bar Association annual changes of officers.

Justice Jackson has summarized the need and scope of the investigation as quoted in the account of the appointment of this Committee on page 573 of this issue.

As the August issue of the JOURNAL will be devoted exclusively to the Diamond Jubilee Anniversary, I want to take this opportunity to express my sincere thanks to the officers, Sections, Committees and members of our Association who have worked with me as a team to make the achievements of the year possible.

This association year plus the intervening time from my nomination in February, 1952, have been extremely busy but most interesting. Much has been accomplished with which you are familiar and in which you had a part. During this period I have traveled much among lawyers, including a trip around the world prior to my election. Everywhere I have been much impressed with the fact that members of our profession are deeply concerned with the solution of legal and governmental problems. The center of gravity of world leadership is in the United States. American lawyers have a peculiar task of leadership in this critical period. I feel that the American Bar Association, with the certain completion of the American Bar Center, has a very bright future of service to the profession and public. I bespeak your continued support of our objectives under the able leadership of our next President, William J. Jameson.

Manuscripts for the *Journal*

■ The JOURNAL is glad to receive from Association members any manuscript, material or suggestions of items for consideration for publication. With our limited space we can publish only a few of those submitted, but every article we receive is considered carefully by members of the Board of Editors unless for some reason it is plainly unsuited for our publication. Articles in excess of 3000 words including footnotes cannot ordinarily be published; exceptions are sometimes made as to solicited contributions. The facts stated and views expressed in any article identified with an individual author are upon his responsibility.

Manuscripts must be typewritten originals (not carbon copies) and must be double or triple spaced, including footnotes and any quoted matter. The Board of Editors will be forced to return unread any manuscript that does not meet this requirement.

As the work of the Board of Editors is carried on by men who are widely separated in distance and busy in their own professional pursuits, time often elapses before a decision can be made as to whether a proffered article is acceptable and space can be made available for it. We cannot assure that submitted manuscripts not accepted will be returned, although that may usually be done. Because of the small size of the JOURNAL staff, unsolicited manuscripts cannot always be immediately acknowledged, although every effort will be made to do so. A period of four or more weeks is usually required for consideration of material; some manuscripts may require more time for consideration because of the nature of their subject matter.

American Bar Association Journal

the official organ of the

AMERICAN BAR ASSOCIATION

published monthly

The objects of the American Bar Association, a voluntary association of lawyers of the United States, are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote the administration of justice and the uniformity of legislation and of judicial decisions throughout the nation; to uphold the honor of the profession of law; to apply its knowledge and experience in the field of the law to the promotion of the public good; to encourage cordial intercourse among the members of the American Bar; and to correlate and promote such activities of the Bar organizations in the nation and in the respective states as are within these objects, in the interest of the legal profession and of the public. Through representation of state, territory and local bar associations in the House of Delegates of the Association, as well as large membership from the Bar of each state and territory, the Association endeavors to reflect, so far as possible, the objectives of the organized Bar of the United States.

There are seventeen Sections for carrying on the work of the Association, each within the jurisdiction defined by its by-laws, as follows: Administrative Law; Antitrust Law; Bar Activities; Corporation, Banking and Business Law; Criminal Law; Insurance Law; International and Comparative Law; Judicial Administration; Labor Relations Law; Legal Education and Admissions to the Bar; Mineral Law; Municipal Law; Patent, Trade-Mark and Copyright Law; Public Utility Law; Real Property, Probate and Trust Law; Taxation; and the Junior Bar Conference. Some issue special publications in their respective fields. Membership in the Junior Bar Conference is limited to members of the Association under the age of 36, who are automatically enrolled therein upon their election to membership in the Association. All members of the Association are eligible for membership in any of the other Sections.

Any person who is a member in good standing of the Bar of any state or territory of the United States, or of any of the territorial groups, or of any federal, state or territorial court of record, is eligible to membership in the Association on endorsement, nomination and election. Applications for membership require the endorsement of a member of the Association in good standing and are considered in each case by a Committee on Admissions of the appropriate state. If the applicant is a member of the Bar of the state or territory in which he resides or has his principal office, or is a member of a federal, state or territorial court of record of a state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of such states or territories. If, however, the applicant is not a member of the Bar of the state or territory in which he resides or has his principal office, the application is referred to the Committee on Admissions for one of those states or territories or is referred to the Committee on Admissions for a state or territory in which the applicant formerly resided and to the Bar of which he was admitted. Upon the approval of an application by a majority of the proper Committee on Admissions, an applicant is deemed nominated for membership. All nominations made pursuant to these provisions are reported to the Board of Governors for election. Four negative votes in the Board of Governors prevent an applicant's election.

Dues are $16.00 a year, except for the first two years after an applicant's admission to the Bar, the dues are $4.00 per year, and for three years thereafter $8.00 per year, each of which includes the subscription price of the JOURNAL. There are no additional dues for membership in the following sections: Bar Activities, Criminal Law, Judicial Administration, Legal Education and Admissions to the Bar, and the Junior Bar Conference. Dues for the Section of Administrative Law, the Section of Antitrust Law, the Section of Labor Relations Law and the Section of Patent, Trade-Mark and Copyright Law are $5.00 a year; dues for the Section of Taxation are $6.00 a year; dues for all other Sections are $3.00 a year.

Blank forms of proposal for membership may be obtained from the Association offices at 1140 North Dearborn Street, Chicago 10, Illinois.

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1953

ANNUAL MEETING

Boston, Massachusetts,

August 23-28, 1953.

Headquarters—Hotel Statler (All space exhausted)

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The Seventy-Sixth Annual Meeting of the American Bar Association will be held in Boston, August 23 to 28, 1953. Further information with respect to the schedule of meetings will be published in forthcoming issues of the *Journal*.

Attention is called to the fact that many interesting and worthwhile events of the Meeting will be arranged, as usual, to take place on Saturday and Sunday, August 22 and 23, preceding the opening sessions of the Assembly and House of Delegates, August 24.

Requests for hotel reservations should be addressed to the Reservation Department, American Bar Association, 1140 North Dearborn Street, Chicago 10, Illinois, and should be accompanied by payment of $10.00 registration fee for *each lawyer* for whom reservation is requested. **Be sure to indicate *three* choices of hotels, and give us your definite date of arrival, as well as probable departure date.**

Because of extreme shortage of single rooms, please arrange to share double room with another wherever possible.

Specialization in the Law?

The Medical Profession Shows the Way

by Charles W. Joiner • Professor of Law at the University of Michigan Law School

■ "Specialization" is one of the features of the twentieth century. Engineers, football players, educators, cooks, physicists, farmers, workers in automobile factories—even barbers and bartenders—often devote all their working hours to one small task in a tiny corner of the field of their trade or profession. Traditionally, the organized Bar has resisted specialization in the law. It was only last year that the House of Delegates approved an amendment of the Canons of Ethics that, for the first time, explicitly recognizes patent and admiralty law as specialties. Professor Joiner believes that this is the beginning of a breakdown in the opposition to legal specialties, and he summarizes the history of specialization in the medical profession as an example for the legal profession.

■ Lawyers are excited, disturbed, enthused or curious about the recognition of specialization in various fields of the law. Whatever their viewpoints, there is an immense amount of discussion about the problem. The American College of Trial Lawyers was established recently. The patent and admiralty lawyers have succeeded in identifying themselves publicly. The Tax Section of the American Bar Association has been discussing the tax lawyer as a specialist. The President of the American Bar Association, Robert Storey, has appointed a Special Committee to study the problem.[1]

Before too much is said as to the desirability of specialization and too many proposals are made on the details of publicly identifying specialists, it would be wise to look at the medical profession to see how specialization there developed and to ascertain what were the compelling reasons for the recognition of the medical specialties. We should be particularly curious to see the relationship in the development of the medical specialties to the advanced educational programs available to those who desired to become highly proficient in an area of practice.

The following is a brief résumé of the history of the medical specialties taken from various writings, the reports and recommendations of various medical committees.[2] If this brief historical statement has any value, it will come from the fact that it shows that the recognition of the medical specialties arose from the profession's desire to improve the quality of medical practice by improving the advanced practical medical education.

Although the American Medical Association was formed more than one hundred years ago, with the purpose of elevating the standards of medical education in this country, its activity was intermittent and ineffective until the first part of the twentieth century. At this time, undergraduate medical education was being severely criticized by the profession resulting in the creation of the Council on Medical Education. For a period of about ten years, this Council did yeoman service in investigating and improving conditions in undergraduate medical education. In the year 1908, the Carnegie Foundation for the Advancement of Teaching advanced funds for the purpose of making a survey and recommendations relative to the teaching of medicine. This study was begun in 1908 by Doctors Abraham Flexner for the Foundation and M. P. Colwell for the Council. The results were published in 1910, in what is commonly known as "The Flexner Report".

It is reported by Fishbein in his *History of the American Medical Association* that "the Association was greatly strengthened in its struggle to improve medical education by this report from a neutral educational foundation of high standing. The

1. The committee is called the "Special Committee on Continuing and Specialized Legal Education". Its membership consists of Laird Bell, of Chicago, *Chairman;* Erwin N. Griswold, of Cambridge, Massachusetts; Thomas F. McDonald, of St. Louis; Charles B. Nutting, of Pittsburgh; Burt J. Thompson, of Forest City, Iowa; Harrison Tweed, of New York City; and Charles W. Joiner, of Ann Arbor, Michigan.

2. Besides the various reports referred to in the text, the material contained herein comes largely from three sources: Fishbein, *History of the American Medical Association;* *Directory of Medical Specialists;* and a paper by Dr. Ray Lyman Wilbur, "Progress in Graduate Medical Education", 114 *Jour. A.M.A.* 1141 (1940).

report criticized medical education in this country even more severely than had the reports of the Council. It advocated reforms previously urged by the Council including 'the development of our medical schools as an organic department of our universities, the dictum that the proprietary schools no longer had the right to exist, the necessity of university training in physics, chemistry and biology, and modern languages, before beginning the medical course, the necessity of having the laboratory sciences of anatomy, physiology, pathology, and pharmacology taught by full-time men, the necessity of a teaching hospital and dispensary for the teaching of the clinical subjects, the importance of bedside instruction . . . '"

As can be seen, this report dealt primarily with undergraduate medical education. It resulted in continuous efforts being made to improve undergraduate medical education.

In the year 1913, a special committee of the Council was created to investigate the status of graduate teaching. During the next two years certain important objectives of graduate medical education were formulated. These were (1) to offer advanced instruction and opportunities for research; (2) to prepare physicians for special fields of work; (3) to offer opportunities for review and for keeping in touch with the advances in medical science subsequent to graduation; and (4) to make up deficiencies in previous medical education.

Surveys were made that revealed inadequate existing facilities for advanced training to meet any of these objectives.

Surveys Revealed Two Basic Needs

The four objectives formulated by the special committee showed two basic needs: (1) the need for special graduate study to prepare physicians for the special fields of practice, and (2) the need for continuing medical education to offer opportunities for review, to keep up to date and to make up deficiencies in previous medical education. As to these two fields, the medical profession has pursued different courses.

In the field of graduate work for review purposes and to keep the doctors up to date, the profession itself assumed the burden of doing this job by holding clinics at various professional meetings. This is substantially comparable to the program on continuing legal education sponsored by the various bar associations throughout the country under the guidance of the Committee on Continuing Legal Education of the American Law Institute co-operating with the American Bar Association.

In the field of preparation for specialties, however, the Council took an entirely different approach. Aside from opportunities for research, the better schools of medicine had, at this time, made little provision for graduates who sought advanced instruction. They were occupied with the details and difficulties growing out of their undergraduate programs, particularly in the light of the critical reports, including the Flexner Report. Before 1915 the schools had shown little interest in the organization of practitioners' courses. This field was left to the "postgraduate" schools. Some of these were of doubtful character and were considered inferior and unsatisfactory.

The council felt that the better undergraduate schools should as far as possible undertake to provide further graduate instruction as a public service. This graduate instruction, it was felt, should be on a practical level, with major emphasis on the various areas of specialized practice. In 1919, the chairman of the Council and the chairman of a special committee on graduate medical education visited all but a few of the graduate schools of the country. On the basis of this survey, they determined:

(1) That the facilities for graduate medical work were entirely inadequate;

(2) That the legitimate demand for work of this kind should be met;

(3) That this demand which had heretofore been met by proprietary schools should be met by the universities;

(4) That it would be desirable for from fifteen to twenty strong university medical schools to consider developing graduate departments.

In 1920, in order to secure a basis for the approval of graduate medical work, the Council appointed fifteen special committees of nine members each to recommend what preparation was deemed essential to secure expertness in each of the specialties to which they were assigned. These committees covered various phases of medical practice. They submitted their reports in 1921 and on the basis of these reports, the chairman of the Council recommended that the stronger universities with medical schools should be requested to undertake the development of graduate courses. It was also his recommendation that after such schools were established, practice in the specialties should be restricted to men having the proper training. His theory was that, in the face of conditions existing at that time, it was the duty of the medical profession to protect the public against ill-trained, incompetent specialists by securing such action on the part of the universities and the state licensing boards. The direct effect of this widespread study was the adoption in 1923 by the House of Delegates of the American Medical Association of a set of principles governing graduate education in the specialties. The list of approved graduate schools grew. In 1919, there were eighteen, seven of which were connected with universities. In 1934, there were thirty-eight, and thirty were connected with universities.

While all this was going on within the American Medical Association, the same problem was being attacked from another angle. Various specialties had formed their own organizations and within them had attempted to improve graduate medical training. The first of these was the American Ophthalmological Society. In 1913 this Society, together with the Section on Ophthalmology of the American Medical Association and

the American Academy of Ophthalmology and Otolaryngology, appointed committees to report on Ophthalmic Education. In 1914, these committees recommended that medical schools of the first class establish courses in opthalmology leading to appropriate degrees and that these courses should represent not less than two years of systematic work subsequent to the taking of the degree of Doctor of Medicine. There was unanimous agreement that systemized and standardized training was needed for those who would practice this specialty.

It was also recognized that such a course would not solve the problem of differentiating in some degree between the competent and the incompetent among those now practicing ophthalmology. A year later a joint board was created consisting of three representatives of each of the three societies, and in 1916 this board was organized as the American Board of Ophthalmic Examinations. It was incorporated on May 3, 1917.

The principal purposes of this Board, as well as other boards which were established in other specialties, were to raise the standard of education among the members of the profession practicing the specialty and to provide some means of differentiating between those competent and incompetent persons in the practice of that specialty. As a result, the Board elevated the standards of ophthalmology, determined the competence of practitioners professing to be specialists in ophthalmology, arranged and conducted examinations to test the qualifications of candidates who appeared before the Board for certification as specialists in ophthalmology, granted and issued certificates of qualification to specialists in the field of ophthalmology to candidates successful in demonstrating their proficiency, acted as advisers to prospective students in ophthalmology and served the public, hospitals and medical schools by preparing lists of specialists certified by the Board. In no way did the certificates offered by the Board confer any privileges upon the recipients. The certification was merely an attempt to differentiate between those deemed qualified and those deemed not qualified.

The Board set up a number of prerequisites before a certificate could be issued: (1) high ethical and professional standing, (2) full citizenship where practicing, (3) a degree from a medical school of high standing satisfactory to the Board and approved by the Council on American Education and Hospitals of the American Medical Association, (4) completion of an internship of not less than one year in a hospital approved by the Council, (5) not less than three years of combined study, training and practice in ophthalmology in approved medical schools, hospitals, clinics, dispensaries, laboratories, preceptorships and private practice.

In addition to all this, the candidate was required to submit a list of papers and books published, ten case reports, written examinations on practical matters, be a member of the American Medical Association and other recognized societies and pay a fee. The Board also specified certain types of basic and special training which it deemed essential.

I go into detail on this particular society because it is typical of others which were formed during the period 1913 to 1934. Each of these societies had substantially the same aim: improving the quality of the persons practicing in the specialty and providing some means of identifying such persons. Prior to 1934, there were established four such American boards: the American Board of Ophthalmology, created in 1916; the American Board of Otolaryngology, established in 1924; the American Board of Obstetrics and Gynecology, in 1930; and the American Board of Dermatology and Syphilology in 1932.

Each of these boards was established in substantially the same way —the organizations interested in one particular field getting together and creating their own agencies. During part of this time, plans for the organization of similar boards in other specialties were being actively projected. All these groups were desirous of availing themselves of the experience of the already existing boards. It soon became clear that there was a need for more co-ordination between boards to prevent overlapping. It was clearly essential that an examining board must have the official sanction of the national societies in its given specialty as well as that of its section of the American Medical Association. But there was at that time nothing to prevent unofficial groups from organizing examining boards and using the title "American Board". To avoid duplication of effort, as well as to co-ordinate the work of several boards, and other interested groups into a concise and homogeneous plan for betterment, it was deemed advisable to create an advisory board, which was to give consideration to those problems common to all and which should be representative of each organization concerned.

In 1933, the chairman of the Council on Medical Education and Hospitals reported to the Congress on Medical Education and Licensure that the Council was ready to define

Charles W. Joiner has been a member of the University of Michigan Law School since 1947. A graduate of the State University of Iowa, he was admitted to the Iowa Bar in 1939 and practiced at Des Moines from 1939 to 1947 except for two years' service during the war with the Army Air Force Training Command.

its relationship with respect to the special practice of medicine and stated that it was possible to (1) provide certain minimum standards of education and training for specialists and to list in the American Medical Directory or in some special directory those whose achievements equalled these standards; (2) provide lists of schools or institutions approved for training of specialists; (3) list hospitals offering residencies or positions suitable for the training of specialists; (4) come to a decision as to the way in which those who are already in special fields shall be designated; (5) work out, in conjunction with the Association of American Medical Colleges, the American Hospital Association, the National Board of Medical Examiners and the national societies, constructive plans for dealing with those who plan to enter special fields. The Congress on Medical Education and Licensure approved the resolution that the Council be asked to carry forward its plan of developing controlled specialties.

In the same year, the House of Delegates of the American Medical Association approved the following resolution:

> That the Council on Medical Education and Hospitals is hereby authorized to express its approval of such special examining boards as conform with the standards of administration formulated by the Council and be it further resolved that the Board of Trustees of the American Medical Association be urged to use the machinery of the American Medical Association, including the publication of its Directory, in furthering the work of such examining boards as may be accredited by the Council.

Thus, in 1934, the Advisory Board for Medical Specialties came into being. It was composed of two representatives from each of the approved examining boards in the medical specialties and such other national organizations as were interested in education, examination and certification of medical specialists. The Advisory Board accepts new medical specialities that qualify under the Board's regulations and recommends the specialty board to the Council on Medical Education and Hospitals of the American Medical Association as qualified for recognition. Membership in the Advisory Board provides for the inclusion of the name of the organization in all lists and directories published by the Advisory Board for Medical Specialties and provides also for publication of the names of specialists certified by each individual examining board.

The basic purpose of the Advisory Board is to co-ordinate graduate education and certification in medical specialties in the United States and Canada. In carrying out this basic purpose the Advisory Board has set up "Essentials for Approved Special Examining Boards". The special examining boards are the boards in each of the recognized specialties. These essentials include a general outline of the requirements for the organization of the specialty board, a definition of the special fields in which the specialty boards are recognized, qualifications that any candidate for admission to a specialty group must meet, including professional and educational qualifications stated in a general way.

The special examining boards in the specialty fields must have the official sponsorship of the national societies and the related section of the American Medical Association before they will be recognized.

The individual specialty boards have as their basic purposes: the improvement of the standards of the practice of the specialty, the determination of the eligibility of persons who would be members of the specialty board, the conducting of examinations to make this determination, the issuance of certificates to those qualified, assistance in improving educational opportunities for training of persons in the specialty and the regulation of the specialty.

The activities of the Advisory Board and the examining boards are all outside the scope of the procedure for certification to practice medicine. So far as I have been able to determine, no serious effort has been made by the medical groups to provide special licensing by the state for the practice of the specialties. The aims seem to have been limited to providing recognition for those qualifying in the specialty, and to improving the educational facilities for those who desire to become very proficient in the area of practice covered by the specialty.

Where does all this leave us? In medicine it appears that the improvement of educational facilities in the areas of specialization so as to provide more competent doctors practicing in those areas was the major objective behind the recognition of the specialties. If the legal profession is at all comparable, more attention should be given to a plan for legal education in the good law schools, of the practicing members of the Bar in the various areas in which special proficiency is required.

Improvement in specialty educational facilities may not need to precede specialty recognition, but certainly it should not lag behind and should be the major aim of the specialty organization. The second conclusion that I would draw from this history is that there is a need for over-all co-ordination of specialty groups such as is accomplished by the medical advisory board. Otherwise the various branches of practice will be going off in various directions, confusing the public, rather than being of assistance.

Let us open our eyes to the facts of legal life. 1. There are areas of practice needing lawyers with special proficiency. This does not mean that those who practice in these areas can, because of their specialization, neglect the fundamentals of the law. 2. There is need to provide, in each of these areas of practice, for special training in one or more good law schools. 3. Because of the interaction of many phases of the law, this special training should come after a lawyer has developed a sound approach to the law generally. Specialization and area high proficiency must come after general legal education. 4. There is need for a specialty organization broadly constituted to set standards for education in that area of practice and for recognition of the expert specialist. 5. There is a need

for recognizing publicly men in a specialty group who have met the standards of higher proficiency in that area of practice, as a result of special training and practice. 6. There is a need for a co-ordinating and advisory agency to see that the individual specialty groups act in the interest of the public and with knowledge as to the scope of the practice of other groups.

Certainly it is not my intention to push the analogy between medicine and law too far. Few lawyers practice in a given area of proficiency to the exclusion of other practice, as do the doctors. I suppose it is doubtful whether such exclusive practice is wise, for such a person would likely become an introvert within his specialty and on occasion might miss the relationship of his actions on behalf of his client and other phases of the law. This, however, does not answer the claim that there is a need for a great deal of proficiency in certain areas of practice, more than the ordinary lawyer normally has. In the same way it does not answer the claim that there is a need for a means to acquire this proficiency or that there is a need for public recognition of this proficiency so that other lawyers and laymen may avail themselves of this increased ability to solve their problems.

1953 Ross Essay Award

Won by Lois G. Forer, of Philadelphia

■ A Philadelphia lawyer, mother of three children, is the first woman ever to win the annual Ross Essay Award of the American Bar Association and the $2,500 cash prize that goes with it.

She is Mrs. Lois G. Forer, who is engaged in private law practice and also is a part-time lecturer at the University of Pennsylvania Law School. Her essay on the subject: "Guarantees of Free Speech versus Right to Fair Trial" was unanimously chosen as the best among entries submitted from all sections of the country.

The Ross award was established in 1928 through a bequest of $100,000 made by a member of the American Bar Association, the late Judge Erskine M. Ross of Los Angeles, California. The subject for the yearly essay competition is selected by the Board of Governors of the American Bar Association and the entries are judged by a special committee composed of a law professor, a judge and a practicing lawyer.

Mrs. Forer will receive the cash award at the Diamond Jubilee Meeting of the Association in Boston, August 23 to 28. She has been invited to summarize and discuss her essay before the delegates and members on August 27.

A graduate of the law school of Northwestern University in 1938, Mrs. Forer served several years in Washington on the legal staffs of the U. S. Senate Committee on Education and Labor and the Rural Electrification Committee. For four years she was law clerk to Judge John Biggs, Jr., senior judge of the United States Court of Appeals for the Third Circuit, in Philadelphia. For the last seven years she has had her own law office in the same building which houses the law firm of which her husband, Morris L. Forer, is a partner.

Mrs. Forer has had articles on legal subjects published in the Columbia and Cornell law reviews. She is a member of the Philadelphia Bar Association and the American Bar Association.

Edmund Pendleton:

The Conservative of the Revolution

by Walter P. Armstrong, Jr. • of the Tennessee Bar (Memphis)

■ Edmund Pendleton's career was as distinguished as that of many of his fellow Virginians whose names are better known, possibly because, unlike Jefferson and Madison, his public service was largely confined to his state government. The publication of John May's Pulitzer-Prize winning biography of Pendleton is an event of more than passing interest to the legal profession.

■ It has become an often repeated commonplace that more lawyers participated in the formation of our republic than members of any other profession. And if the names most frequently cited are those of such advocates of independence as Jefferson, Madison and Patrick Henry, there were also others, more conservative in their views, whose roles, though less dramatic, were no less important; for on many occasions it was their wise counsel of caution which prevented the spark of freedom from burning itself out prematurely, and preserved it to kindle the torch of liberty for ages yet to come. Such a one was Edmund Pendleton, whose life, here presented in all of its fullness and richness, is as much a part of our nation's heritage, and that of our profession, as are those of his more famous contemporaries.

EDMUND PENDLETON, *By John Mays. Cambridge, Massachusetts: Harvard University Press. 1952. $15.00. Pages (Vol. I) xi, 385; (Vol. II) 462.*

Born in 1721 in the tidewater county of Caroline in Virginia, he was, at the age of 14, apprenticed to Col. Benjamin Robinson, whose brother, Speaker John Robinson, later left an estate the administration of which occupied so much of Pendleton's time. At twenty he was admitted to practice before the local Bar, and four years later before the general court. In 1751 he became a justice of the peace of Caroline County, and the next year was elected to the House of Burgesses. Thus he was embarked upon a career which was to prove as distinguished as that of any of Virginia's many famous sons. As his biographer puts it, "Once on the stage of Virginia public life, Pendleton never left it. He attained every office he aspired to, and, as far as we know, never lost an election in his life."

Soon after becoming a member of the House of Burgesses Pendleton, along with the others comprising that body, found himself confronted with the problems arising out of the conflict known on this continent as the French and Indian War. The way in which these were met anticipated devices with which we have today become all too familiar: price ceilings on Indian corn, crop controls on tobacco, and similar economic strictures. They were spared only one: the idea of governmental subsidies apparently did not enter anyone's head.

The actual conduct of the war was in the hands of Colonel Washington; but he was held strictly accountable to the civil authority. To most modern military officers, accustomed in wartime to the luxury of waste as a matter of course, the system of accounts that Washington, as a field commander, was required to keep would be maddening. But in Pendleton's day, economy in such matters was expected. He, and his fellow burgesses, thought, quite naturally, there was as high a duty in handling public funds as in dealing with their own. And in their own affairs careful accounting and strict economy were requisite, for most of them were lawyers and the practice of law was neither more remunerative nor clients quicker to pay than they are today.[1]

1. Pendleton and his fellow lawyers before the General Court were forced to adopt a rule that "we will not give an opinion on any case stated to us but on payment of the whole fee, nor prosecute or defend any suit or motion, unless the tax, and one-half the fee, be previously advanced; excepting those cases where we choose to act gratis."

These events, however, were only a prelude to a much greater conflict which was destined to overshadow them all. In 1774 the first Continental Congress met in Philadelphia, and Pendleton was one of the delegates from Virginia. It was largely due to his efforts that this early manifestation of the revolutionary spirit remained moderate in tone. A boycott was agreed upon; but what its ultimate effect might have been can only be surmised, for the experiment was soon swallowed up in the Revolution.

Pendleton's great opponent in the revolutionary debates was Patrick Henry. Although neither man was given to surrender, Henry was quick to give battle, while Pendleton was cautious until he found that the battle could not be avoided. There is little doubt that Pendleton had Henry in mind some years later when he voiced disapproval of those who rushed into "rash measures", and there can be no doubt that he regarded Henry as something of a demagogue. History has justified Henry's inflammatory attitude, and Pendleton's calming influence has correspondingly been minimized.

It was this conservatism which caused him to oppose the appointment of his friend George Washington to the command of the Continental Army, for he realized that Washington's appointment would commit Virginia irrevocably to the defense of Boston and a radical course. But once the choice had been made, he demonstrated his adherence to it in an unmistakable fashion; when Washington arose to make the speech of acceptance, his words were the words of Pendleton.

The fate of our country was to be decided by Washington's military genius and the superiority of rifle over musket.[2] Henry sought glory in the field,[3] according to his nature; while Pendleton carried on the fight for human rights in less spectacular ways, according to his.[4] This man who loved domesticity and enjoyed his profession, even though he properly referred to it as "drudgery", went into public life upon the demands of his friends because he considered it a thing that one of his place in society should do. Public life for him was not a goal or an honor; it was a necessary service that a gentleman must perform. Consequently when the time came for Virginia to declare herself for independence, Pendleton drew the resolution which was adopted.[5]

This brought him into contact with Thomas Jefferson, who later described him as "the ablest man in debate I have ever met with". With him and others he served upon a committee to codify the laws of Virginia, during which service Jefferson had ample opportunity to form this opinion; for Pendleton favored, contrary to his usual disposition, the creation of a new body of statutory law, while Jefferson advocated a restatement of existing law with only such changes as might appear necessary to meet altered circumstances.[6] The chief of these concerned the right of primogeniture, which Pendleton wished to preserve and Jefferson to abolish. This again represented a fundamental cleavage between the two men, for Pendleton was concerned primarily with the family as a whole; Jefferson, with the individual. In this, as in the over-all plan, Jefferson prevailed, and the notes made by George Mason, another of the revisers of the plan finally adopted, begin "The Common Law not to be meddled with, except where Alterations are necessary."[7] Even then much of the new code was too strong for the legislature, and it was more than a century before the last of the acts was adopted.[8] The revisers were far ahead of the General Assembly.

In 1778 Pendleton had been appointed First Judge of the High Court of Chancery. As a result of that office, and under an act of the following year, he likewise became a member of the newly created Court of Appeals,[9] composed of judges of the High Court of Chancery, the General Court, and the Court of Admiralty. The first meeting of this new court confronted its members with an unusual problem. They were in a momentary dilemma, for no commissions had been issued them as judges of the new tribunal. They soon solved that difficulty by reasoning that each held his new place by virtue of his office on one of the other three courts, and that, as they knew each other officially because of their services together on the lower courts, the actual presentation of commissions was unnecessary. On this basis they proceeded to swear each other in; and it was over this court that Pendleton was presiding when a

2. Madison wrote: "The most inexpert hands recon it an indifferent shot to miss the bigness of a man's face at the distance of 100 yards." And one of the gazettes of the era reported: "It is certainly a fact, that in the late engagement at Hampton a rifle-man killed a man at a distance of 400 yards. Take care, ministerial troops."

3. Washington observed: "I think my countrymen made a capital mistake, when they took Henry out of the Senate to place him in the field; and pity it is that he does not see this, and remove every difficulty by a voluntary resignation."

4. By means less drastic, however, than those practiced today. Mr. Mays points out that "the Committee (of which Pendleton was a member) saw no need for censorship as it is employed in modern times—the censorship invoked to keep the homefolks in ignorance." And of a letter of Pendleton to General Charles Lee, he says: "There has been no clearer pronouncement of the principle that in a free government the military must always be amenable to civilian control."

5. Mr. Mays notes: "Unfortunately, in his haste to draft something upon which all could agree, he turned out one of the poorest pieces of composition of his career. It is a pity that in his anxiety to wipe out the King's authority, he took such liberties with the King's English."

6. It may be observed that the argument of Jefferson against the adoption of "a new text and new phrases" is the very one which has been seized upon by those who today oppose the adoption of new rules of procedure, in place of the numerous and often cumbersome statutes and practices which confuse and delay the operations of many state courts. Mr. Mays notes, however, that Pendleton partly misunderstood Jefferson's position.

7. Jefferson later described the product of this Commission: "We had in this work brought so much of the Common law as it was thought necessary to alter, all the British statutes from Magna Charta to the present day, and all the laws of Virginia, from the establishment of our legislature, in the 4th Jac. I. to the present time, which we thought should be retained, within the compass of 126 bills, making a printed folio of 90 pages only."

8. Here, as ever, Jefferson planned for the future. Chief praise goes to him in conforming the laws of Virginia to the spirit of a new age, for it was neither the Pendletons nor the Henrys, but Jefferson, who truly typified the spirit of the Revolution.

9. The method of hearing appeals proposed for this court may well be unique, and many lawyers may regret that it never went into effect, as if it had it might well have furnished an interesting precedent for present-day practice. The judges of the courts whence the appeals came were required to present themselves to the Court of Appeals in order to "deliver the reasons of their judgments". This strange system of grilling judges was never put into practice because of the amendments to the statute in 1779.

series of fortuitous events[10] brought the Revolution to a successful conclusion.

It was not long thereafter that the court was called upon to answer a question of the most basic importance: Did the court or the General Assembly have the last word in determining what was constitutional and what was not?[11] The case involved the validity of certain legislative pardons, and the constitutionality of the act granting them. Pendleton[12] joined with the majority of the court in holding the acts constitutional; but two members, Mercer and Wythe, held that the court had the power to declare acts of the legislature unconstitutional,[13] while the former actually held the act before the court void on that ground.[14] But Wythe's eloquence made him the spokesman for the minority, and his words have come ringing down the years:[15]

> Nay more, if the whole legislature, an event to be deprecated, shall attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers, at my seat in this tribunal; and, pointing to the Constitution, will say, to them, here is the limit of your authority; and, hither, shall you go, but no further.[16]

Constitutional questions were the order of the day. The next with which Pendleton concerned himself was whether Virginia would ratify the Federal Constitution. Again he aligned himself with the outstanding figure in the field,[17] James Madison; and again, although he favored ratification,[18] he urged the conservative view.[19] Again he was opposed by his former adversary, Patrick Henry. Thus did the forces align themselves[20] at the outset of the great debate.[21]

When the delegates to the Virginia convention met, Pendleton, who was one of them, presided.[22] He urged the utmost moderation and temper in discussing the Constitution, but every point was thoroughly aired.[23] The advocates of ratification let their opponents make the first move, and their presentation reached its climax when Patrick Henry, al-

Walter P. Armstrong, Jr., is a frequent contributor to the *Journal*. A member of the Tennessee Bar, he served as Chairman of the Committee on Jurisprudence and Law Reform and succeeded the late Robert P. Patterson as Chairman of the Commission on Organized Crime. He was recently oppointed to membership on the new Committee on Criminal Justice, of which Justice Robert H. Jackson is Chairman.

10. That Cornwallis would move his army over to Yorktown from which there was no escape by land; that the French fleet would drive off the English ships, take momentary command of the sea, and bottle up the British army; that the Fabian General Washington would move with lightning speed and make good his one great opportunity of the war—all these were events beyond anyone's thoughts.

11. Pendleton announced that the complexities of the case were such that the Court would welcome help from any members of the Bar who cared to express themselves. Many leaders of the Virginia Bar of the day responded; but there were notable exceptions. Two of the ablest of the young lawyers, John Marshall and John Taylor, did not participate; Marshall, then only 27, and back from the army, had recently qualified to practice and had just been elected to the assembly. On the other hand, Pendleton's old adversary also failed to appear. Henry, who disliked the drudgery of appellate practice, was reaping golden harvests in the county courts, where juries hung upon his every word. Mr. Mays notes that, although the appointment of *amici curiae* is not uncommon, there seems to have been no precedent for Pendleton's call upon the entire Bar to act in that capacity.

12. As a justice in Caroline he had declared the Stamp Act unconstitutional, and he would declare other acts unconstitutional a few years later.

13. So far as Mercer and Wythe knew, their pronouncements were without precedent in America, although, two years before, the Supreme Court of New Jersey had met the issue squarely, and, in *Holmes v. Walton*, declared an act of the legislature to be unconstitutional. It should also be noted that the very tribunal on which they sat had not been established by the Constitution of Virginia as a co-ordinate branch of government, but was a judicial body created by the same legislature whose acts they would condemn.

14. This was the first pronouncement ever made by a judge of the Commonwealth of Virginia that an act of its General Assembly was unconstitutional and void.

15. Mr. Mays notes, "As late as Franklin Roosevelt's time they rang out in warning."

16. The implications of these opinions were of course far from apparent at the time. Later generations might look back upon the case as a landmark in constitutional law, but to the crowd in the courtroom it was a gripping human-interest story. It was the plight of the prisoners that had caught the public attention, rather than the pronouncements of the judges.

17. In ability, not in appearance or effectiveness as a speaker. Although Madison knew no intellectual superior, his thin voice and puny stature unfitted him for the task of the hour. Even when standing on tiptoe, he was too small to be seen by all the members.

18. His views in favor of the proposed plan of government were well known to the people of Caroline, the majority of whom were opposed to it, as were most of the people in the counties which surrounded Caroline. Nevertheless, such was the respect in which he was held, that the people of the county prevailed upon Pendleton to stand for election to the Convention, as they did James Taylor, who, with him, had so long represented Caroline, and who shared Pendleton's views on the Constitution. Thus did their neighbors deliberately send men to the Convention to express views contrary to those of the electorate. This remarkable circumstance had much to do with the adoption of the Constitution, since Pendleton's influence was to prove powerful in giving the proponents their narrow margin of victory.

19. The Revolutionists had long used the term *Liberty*. Like them, both Madison and Pendleton believed in liberty, but they saw disruptive forces at work and were determined to stop them. Their watchword had become *Order*. And, five years later, in an effort to attain it, these two men, acting together, were to bring an unwilling Virginia, then the largest and most important of the former colonies, to ratify the Constitution of the United States.

20. So the battle was on to win the support of a few outstanding leaders of political thought, first among whom were Pendleton, Patrick Henry and Edmund Randolph—Pendleton, the venerable leader of the tidewater conservatives; Henry, the leader of Southside Virginia and the most eloquent voice America had ever heard; Randolph, now at the height of that popularity which marked him as the idol of the people. Moreover, these men were the leaders of each of the three branches of government—Pendleton, at the head of the judicial system; Henry, the strongest man in the Assembly; and Randolph, filling the office of chief executive. If all three declared for the Constitution, ratification would be quick and easy; if all three declared against it, no man could tell the outcome. By such a thread did the Constitution hang.

21. Naming the leading members of the body soon to convene is like calling the roll in a Hall of Fame. Those men would debate the Constitution as it was debated in no other state and would come as near to exhausting the subject as any three weeks' convention could do. Their arguments would stand forth, eloquent, logical, powerful and prophetic, and would bear comparison with those in any other assembly anywhere and at any time.

22. From a sitting position—which, because of his crutches and ill health, he was permitted to retain at each session, except when addressing the Committee of the Whole in debate.

23. Beginning with the presence of short-hand reporters, who were suspected of being Federal partisans. One of the delegates suggested that "a fatal stab might be given to a gentleman of the house from a perversion of his language".

ready almost a legend,[24] cried, "Sir, give me leave to demand, What right had they to say, *We, the people?* . . . Who authorized them to speak the language of, We, the people, instead of, *We, the states?*" When he had concluded, it was Pendleton who rose to his feet to reply. "An objection is made to the form: the expression, We, the people, is thought improper. Permit me to ask the gentleman who made this objection", his calm and dispassionate voice inquired, "Who but the people can delegate powers? Who but the people have a right to form government?"[25] When he had concluded, Light-Horse Harry Lee began an attack upon Henry in a tone that few would have dared to assume and it became apparent that the Federalists meant not only to destroy Henry's arguments, but to destroy or belittle the man himself. Henry retaliated with the longest and probably the ablest speech he had ever made before a popular body, but the cause was already lost. Adroit parliamentarians like Madison, Pendleton and Nicholas could not be defeated by denunciation alone. It required organization, and never in his life had Henry shown any capacity for that.

Henry, however, did not accept defeat without a final struggle. This took the form of an effort to divert the votes of the delegates from the district of Kentucky, both by what we would today describe as a "whispering campaign"[26] conducted outside of the convention hall, and by a final burst of oratory within its walls. Representatives of some of the northern and eastern states had publicly expressed a willingness to close the Mississippi River to navigation in order to reach an agreement with Spain. Henry seized upon this as the subject for a colorful speech directed to the delegates from the territory bounded on the west by that great river. What remains of it is largely argumentative, but long afterwards aged men delighted to recall his flaming words and to describe the two pictures of the Mississippi country which he painted with matchless imagery. First, he held out to them the broad valley of a mighty river, stretching from the familiar Alleghenies to the unknown mountains of the west, a land teeming with a great and contented people; on every hand to be seen the spires of their churches, their well-tilled fields, their towering cities; the tawny waters of the river dotted with ships bearing every article of commerce. Such would be the Mississippi freed of Spanish domination. Then the master-painter drew another picture —that of the valley with its stream closed to navigation, a scene of unrelieved desolation; neither sail nor oar upon its bosom, as the Father of Waters swept idly to the sea; gone the churches, gone the cities, gone the well-stocked farms of a happy populace; the virgin forest reposing in its primal solitude; only the tread of some startled beast to break the stillness; perchance the silent flight of a bird to be seen against the distant sky, or the lazy smoke curling from the hut of some lurking outlaw hounded from the haunts of men. The effect of this upon the Kentuckians was too apparent to be ignored. That night, with Henry's thunderbolts still ringing in his ears, an anxious Madison penned his misgivings to the great silent chief at Mount Vernon.

Although the Federalists suffered decisive defeat upon this great popular issue, they were able to regain their prestige when the discussion returned to more specific matters. It was Madison who was master now. He knew the history of every word of the Constitution, the arguments on both sides of every question, and all the systems of government, both dead and living. One who follows his answers to Henry, Mason and Grayson knows why he is called the Father of the Constitution. But when the attention of the convention turned to that portion of the Constitution dealing with the judiciary, it was Pendleton, from the abundance of his experience,[27] who dispelled their fears.[28] This he accomplished so effectively that when the final vote was taken, it was eighty-nine to seventy-nine for ratification.

His purpose accomplished, Pendleton returned to his place upon the Court of Appeals of Virginia,[29] from which he expounded a jurisprudence which sounds more than modern.[30] Again and again he would cut through involved arguments over the meaning of words used by men in their wills or contracts. What would a plain man take the words to mean? That was the test he applied.[31] He was fortunate in having

(Continued on page 613)

24. To many of the delegates, Henry and Pendleton were historical figures, heroes from a vanishing past, about whom their fathers had spoken around their firesides.

25. Although a Federalist, Pendleton never underestimated the importance of the states. "The preservation of the state governments is vitally necessary to the federal government", he said. "Upon the former the latter must depend for its very existence."

26. The description of life under the proposed constitution does not always seem so far-fetched today. "All were told, whatever their pet local interests, that men would be carried away for distant trials, remote from friends and witnesses; that the southern states would be taxed to redeem at par the bales of currency which the northern speculators had collected and barreled; that the 'carrying states' (those that controlled maritime commerce) would keep the others in serfdom; and that the new system would develop into an enormous bureaucracy, whose tentacles would reach everywhere, gradually and insidiously, until it became a great, consolidated government."

27. Two of his arguments have a rather queer ring today. He apparently regarded the appellate jurisdiction of the Supreme Court as too broad, and justified it only on the ground that Congress was empowered to limit it; whereas today the power of Congress to limit that jurisdiction is looked upon in some quarters as a dangerous limitation upon the power of the Court. At another point in the debate he said, "I think it highly probable that their [Congress'] first experiment will be, to appoint the state courts to have the inferior federal jurisdiction." This prediction has of course remained unfulfilled to this day.

28. These were very real. Many persons anticipated that "Federal laws made by a distant Congress would be enforced by Tribunals responsible to federal authority alone; the federal government would overrun the land with its judges and its constables; every community would tremble before its inquisitions; the landscape would bristle with its jails."

29. Mr. Mays notes that "he was able to return to the bar with success after each period of political office holding. In the exacting profession of law, few men have proved capable of doing that."

30. Mr. Mays states that "the decisions of the Court of Appeals of Pendleton's time have been cited more than seventeen hundred times by the Court of Appeals of Virginia alone, and, in spite of the criticisms of lawyers who have tried to avoid their effect, and the close scrutiny of succeeding judges during a century and a half, they have rarely been overruled."

31. One writer quotes him as saying that "he always made it his study to ascertain the very right and justice of every case, that came before him, and then to hunt up law to support it."

Survey of the Legal Profession:

Its Scope, Methods and Objectives

■ The longer Survey reports are being published in book form. The shorter reports have appeared as articles in law reviews, bar journals and other periodicals.

The Survey's supply of reprints of such articles is practically exhausted and so this check list (beginning on page 551) telling where each report can be found may be helpful to the large number of persons who write for copies of Survey reports.

The check list is preceded by a general statement about the Survey and its procedures written by Reginald Heber Smith, Director of the Survey. This statement appears as the foreword to Dean Pound's Survey report "The Lawyer from Antiquity to Modern Times", published by the West Publishing Company.

■ The Survey of the Legal Profession is a broad study of the functioning of lawyers in a free society.

Under a government of laws the lives, the fortunes and the freedom of the people are wholly dependent upon the enforcement of their constitutional rights by an independent judiciary and by an independent Bar.

The legal profession is a public profession. Lawyers are public servants. They are the stewards of all the legal rights and obligations of all the citizens. It is incumbent on stewards, if they are to be faithful to their trust, to render an accounting from time to time.

This Survey is an honest effort to make a complete audit and report for submission to the American people.

1. History

When World War II was drawing to its close and the thoughts of men were turning again to the future, the American Bar Association's Section of Legal Education and Admissions to the Bar proposed a study of those subjects for the purpose of improving professional standards.

It soon became apparent that a worthwhile study of the proper objectives of legal education involved the much wider problem of finding out what lawyers actually do in present-day society and whether they are adequately meeting the needs of the public.

This broader plan was approved by the House of Delegates in 1944. Under this authority, the project was carefully developed until it was in the blueprint stage.

By 1947 financial support for the undertaking had been secured. The Carnegie Corporation of New York made a grant of $100,000. The American Bar Association appropriated $50,000, payable over a five-year term, and authorized its President to select a group of lawyers and laymen who would constitute an independent Council having complete charge of the undertaking.

2. Independence

Early in 1947 President Carl B. Rix had recruited the original personnel of the Council, and the group at once went to work to organize the Survey.

From the moment of its inception, the council has been independent, autonomous, and self-perpetuating with its own constitution, its own officers, and its own treasury.

This cardinal fact cannot be emphasized too much or stated too often. It has been expressed most clearly by Judge William L. Ransom, Editor-in-Chief of the AMERICAN BAR ASSOCIATION JOURNAL in its issue of May, 1947 (33 A.B.A.J. 423):

> The Survey will be conducted as an independent project in the interests of the profession and the public by the Director and the staff which he selects, and will go forward with the advice of the Council.
>
> The relationship of our Association is that it perceived the need for finding out the facts about our profession, arranged for the financing of the Survey jointly by the Carnegie Corporation and the Association, sponsored the selection of the Council from among lawyers and non-lawyers with outstanding qualifications, and committed the project to the independent judgment of this distinguished body and the Director chosen by it. With these steps of organization completed in April, the Survey and its results are completely in the hands of the Director and Council.

3. Objectivity

As to whether a profession can be surveyed impartially by one of its own members, there are two schools of thought.

On the one hand it is maintained that a lawyer (for example), however

honest he may be, cannot study his fellow lawyers with objective impartiality because he has "blind spots" of which he is wholly unconscious. He is so close to the trees that he cannot see the forest. On the other hand it is claimed that a learned profession, such as that of law, can be grasped only by devoting a lifetime to it, that the true nature of the client-lawyer relationship can be understood only by having lived in that confidential relationship.

Concerning research in the field of medicine, Professor Lawrence J. Henderson has commended the method of Hippocrates and said:

> The first element of that method is hard, persistent, intelligent, responsible, unremitting labor in the sick room, not in the library: the all-around adaptation of the doctor to his task, an adaptation that is far from being merely intellectual. The second element of that method is accurate observation of things and events, selection, guided by judgment born of familiarity and experience, of the salient and the recurrent phenomena, and their classification and methodical exploitation. The third element of that method is the judicious construction of a theory—not a philosophical theory, nor a grand effort of the imagination, nor a quasi-religious dogma, but a modest pedestrian affair, or perhaps I had better say, a useful walking-stick to help on the way—and the use thereof.

It is demonstrably true that today the sharpest critics of the legal profession and the administration of justice are judges, lawyers, and teachers of law. It is historically true that the great legal reforms of the twentieth century have been devised, fought for, and established by lawyers. Often they have been opposed by too many members of the profession; often they have won the day only by securing public support; but the fact remains that the constructive leadership came from within the legal profession itself.

In any event, and for better or worse, when the Council met to organize, all its members—laymen and lawyers alike—voted to elect as first Director of the Survey, The Honorable Arthur T. Vanderbilt of Newark, a highly successful general practitioner with wide experience in litigation who was also Dean of New York University School of Law.

4. Organization

As an independent entity the Council chose its own officers and elected the following: chairman, Judge Orie L. Phillips of Denver, Chief Judge of the United States Court of Appeals for the Tenth Circuit; secretary, Dean Albert J. Harno, of the University of Illinois College of Law; and treasurer, Judge Walter M. Bastian of Washington, D. C., Judge of the United States District Court for the District of Columbia.

In a sincere effort to secure objectivity, the Council created an Advisory Committee of Laymen which has met regularly, been given access to all material, been furnished with all reports, and which has the right at any time to speak its own mind. This Advisory Committee has itself supervised the preparation of the Survey report entitled "Complaints Against Lawyers".

To round out the account of personnel, it is necessary to report three events which took place later. In the fall of 1947 Dean Vanderbilt became Chief Justice of New Jersey and felt obliged to resign as Director. To succeed him the Council elected Reginald Heber Smith, of Boston.

When it became apparent that all members of the Council could not be expected to read all Survey reports, that burdensome duty was entrusted to a Committee on Publications consisting of Wm. Clarke Mason of Philadelphia, former Chancellor of the Philadelphia Bar Association; Charles P. Curtis, of Boston, author as well as practicing lawyer; and Devereux C. Josephs, of New York, President of the New York Life Insurance Company.

In 1951 it was decided that it would be highly advantageous to have a layman make an appraisal and report on the work of the Survey. For that responsible task the Council selected George Waverley Briggs, Vice President and Trust Officer of the First National Bank in Dallas, who had long shown a deep interest in the field of law reform.

Under Dean Vanderbilt's direction the basic organizational structure of the Survey was designed. The whole field was divided into six major divisions as follows:

I. Professional Services by Lawyers and the Availability of Lawyers' Services
II. Public Service by Lawyers
III. Judicial Service and its Adequacy
IV. Professional Competence and Integrity
  A. Legal Education
  B. Admission to the Bar
  C. Professional Ethics, Discipline, Disbarment
V. Economics of the Legal Profession
VI. The Organized Bar

Under Mr. Smith's direction the first task was to assemble the large number of persons needed to do the spade work in so vast a field. Over four hundred men and women have been recruited for that purpose.

They constitute the "Survey team" and the credit for what has been accomplished belongs to them.

More than 90 per cent of them have been volunteers serving without compensation.

To keep the record straight, it may be appropriate to add here that the members of the Council, the officers, and the two Directors have all served without compensation. All men have stayed at their posts throughout the seven years which the Survey has required. When Chief Justice Vanderbilt resigned as Director, he remained on the Council. The one exception was the obviously necessary resignation of Mr. Paul G. Hoffman from the Council when he became Director of E.C.A.

5. Censorship

Just as objectivity was the Council's first great problem, so ultimate control of and responsibility for all the Survey work, reports, and findings became its second. This is the age-old problem of censorship.

Inasmuch as there were no strings on the grants of money by the Car-

negie Corporation and the American Bar Association, they had no power of censorship. The issue, if it ever arose, would be between the Council and the Director.

At its organization meeting, Mr. Hoffman explained to the Council the principles involved and illustrated them out of his experience as chairman of the Committee on Economic Development. On the one hand no self-respecting person will give years of his life to an undertaking if, at the end, his report is to be suppressed or thrown away. On the other hand, self-respecting persons cannot afford to serve on a Council if, at the end, they are to be held publicly responsible for proposals which they believe to be evil.

The only tolerable solution was written into the Survey's constitution and provides:

> The Director of the Survey shall have academic freedom to determine the scope of the various divisions of the Survey, the selection of the staff to conduct the work of the Survey and the order of conducting the same. The Director shall make report to the Council from time to time of the conduct and progress of the Survey and, as and when the divisions of the Survey shall in the judgment of the Director be concluded to the point of forming a basis for publication, shall make report to the Council before actual publication thereof shall be made. Matters concerning publications may, by the Council, be referred to its Committee on Publications.
>
> The Council shall consider with the Director all matters with respect to the Survey intended for publication and, in the event that there may be disagreement between the Director and a majority of the Council with regard to conclusions based upon recorded facts, the Council shall record it conclusions and they shall be published simultaneously with the report of the Director.

This academic freedom accorded to the Director has in practice also been extended to the writers of Survey reports after their selection by the Director and approval by the Council.

6. Reports

A good many people have in their minds a stereotyped picture of how a survey is conducted. A group of workers busily amass a mountain of data. Then the man in charge writes it all out and the result is a tome of forbidding proportions. It may cause a momentary agitation of public opinion but it is likely to end up gathering dust on a library shelf.

In the hope of escaping such a fate, the Council decided upon the seriatim publication of reports as rapidly as they were ready and had the approval of the Committee on Publications.

The Survey's first report appeared as the leading article in the April, 1949, issue of the AMERICAN BAR ASSOCIATION JOURNAL. It was "Law Practice in Russia: The Organized Bar in the U.S.S.R." by Professor John N. Hazard of Columbia University School of Law. Although it dealt with a territory where emotions are quickly aroused, this report set a standard for accuracy and impartiality. It quickly became recognized as the authoritative treatise on the subject.

By the steady publication of report after report the Survey became a dynamic undertaking, and it began to exercise more and more influence.

A good illustration of how this comes about is afforded by the Survey's report on "The Lawyer Reference Plan" by Charles O. Porter, now of Eugene, Oregon, which was published in booklet form in November, 1949.

The report was released at a press conference in New York. As it deals with the legal problems of middle-income or average Americans, it had a wide appeal. The daily newspapers carried the story and then it was picked up by periodicals with wide circulation such as *Nation's Business, This Week Magazine, Atlantic Monthly,* and *Reader's Digest.*

The President of the American Bar Association, Harold J. Gallagher, made a coast-to-coast radio broadcast on the subject. As he went about the country speaking to state and local bar associations, he emphasized the importance of the plan.

In 1949 there were fewer than 30 Lawyer Reference Services; now there are more than 80. The American Bar Association has created a Standing Committee on Lawyer Referral Service. This, together with Legal Aid, constitutes one of the six primary objectives of the American Bar Association in its long-range program.

The Survey's over-all plan called for somewhat more than 150 separate reports. By September, 1949, 10 reports had been brought to completion; by September, 1950, 66 had been completed; by September, 1951, the number of completed reports had risen to 118; and by September, 1952, the score was just over 150.

7. Publication

To avoid publishing costs that would have been far in excess of the Survey's financial resources, two procedures were adopted which have turned out to be successful.

As to longer reports which must be published in book or booklet form, the Survey has appealed to law book publishers for their co-operation. In practical terms this has meant that the publishers have produced the book at their own expense and then sold 1,000 copies to the Survey at a price far below cost. The distribution of these copies will be explained a few paragraphs later.

The shorter reports constituted excellent articles for law reviews, bar journals, and other periodicals. The articles were published without cost to the Survey; but the Survey bought between 500 and 1,000 reprints at cost of each report-article.

It was plainly essential that every member of the Survey team should be kept informed as promptly as possible of what other members were accomplishing.

Thus the nucleus of the Survey mailing list was the Survey team itself and this constituted a remarkable cross-section of lawyers throughout the nation. To this were added the law schools, the larger libraries, bar association officials, and a list of persons who asked to be placed on the mailing list.

While no exact count has been

kept, it is conservative to say that the copies of books distributed plus the copies of article reprints would number more than 100,000 items.

The Survey's supply is virtually exhausted; but as the demand for copies is now steadily increasing, it is hoped that some plan may be evolved whereby the scattered reports may be put together in two or three volumes.

The longer reports which are in book form can be purchased from the publishers.

8. Conclusions

The Survey is now completed for all practical purposes except for two final reports.

One is being written by the Director. It is entitled "The Legal Profession in the United States". It is addressed to the American people. It will contain the Survey's final conclusions and recommendations.

The other will be written by Mr. George Waverley Briggs. It will appraise the whole Survey undertaking from the point of view of an informed layman and will discuss the merits or demerits of the Survey's recommendations.

REGINALD HEBER SMITH

February, 1953

Division I
Professional Services by Lawyers and Availability of Services

A. *Professional Services by Lawyers*

"Labor Union Lawyers: Professional Services of Lawyers to Organized Labor", Robert M. Segal, *Industrial and Labor Relations Review*, Vol. 5, No. 3, April, 1952.

"Corporate Legal Departments", Charles S. Maddock, *Studies in Business Policy No. 39, National Industrial Conference Board, Inc.*, January, 1950.

"The Corporation Law Department", Charles S. Maddock, *Harvard Business Review*, Vol. 30, No. 2, March-April, 1952.

"The Government Lawyer", Peyton Ford, Clive W. Palmer and David Reich, published for the Survey by Prentice-Hall, Inc., 1952.

"Salaried Services by Lawyers in Local Government", Charles S. Rhyne, *Municipalities and the Law in Action*, 1952 Edition, published by National Institute of Municipal Law Officers.

"Workmen's Compensation and The Lawyer", Joseph Bear, *Columbia Law Review*, December, 1951; see also *Law Review Digest*, March-April, 1952.

"The Legal Profession Takes Stock", Reginald Heber Smith, *The Church Militant*, Vol. LII, No. 10, January, 1950.

"Changes in the Law During Forty Years", Zechariah Chafee, Jr., *Boston University Law Review*, Vol. XXXII, No. 1, January, 1952.

"The Family and The Law", Earl Lomon Koos, mimeographed, 1948. (The supply of this report has been exhausted.)

B. *Availability of Lawyers' Services*

LEGAL AID—CIVIL

"Legal Aid in the United States", Emery A. Brownell, published for the Survey by Lawyers Co-operative Publishing Company, October, 1951.

"Extension of Legal Aid into Smaller Communities", John S. Bradway, *Tennessee Law Review*, Vol. 22, No. 4, June, 1952.

"The Development of Legal Aid Movement in the Southeast", Frances C. Dwyer, *Tennessee Law Review*, Vol. 22, No. 4, June, 1952.

"Defects in Present Legal Aid Service and the Remedies", Raynor M. Gardiner, *Tennessee Law Review*, Vol. 22, No. 4, June, 1952.

"The Cost of Legal Aid in a Metropolitan Area", Reginald Heber Smith, published for the Survey by the American Bar Association Committee on Legal Aid Work, 1951; originally printed in *Collected Addresses of Lawyers Week, 1951*, by Southwestern Legal Center, Dallas, Texas.

"The English Legal Assistance Plan: Its Significance for American Legal Institutions", Reginald Heber Smith, *A.B.A.J.*, June, 1949; reprinted in *Law Society Gazette*, England.

"The English Legal Assistance Plan: A Description of Its Machinery", Robert D. Abrahams, *A.B.A.J.*, January, 1950.

"Law School Legal Aid Clinics", Quintin Johnstone, *Journal of Legal Education*, Vol. 3, No. 4, Summer, 1951.

"A Standard of Measurement for Determining the Need of Legal Aid Service in Urban Areas", Allan Fisher and Edwin M. Woods, mimeographed, 1948.

"Legal Aid and Social Work", Marguerite R. Gariepy, mimeographed, 1948.

"Development of Legal Aid Tenth Federal Judicial Circuit", Paul F. Irey, mimeographed, 1948.

"Memorandum on the Relation Between Legal Aid and Lawyer Reference Plans", Gerald Monsman, mimeographed, 1948.

"Legal Aid as Watchdog for the Poor", George H. Silverman, mimeographed, 1948.

"Legal Aid Clinic Reports", Quintin Johnstone, mimeographed, 1951.

(The supply of the 6 mimeographed reports above has been exhausted.)

LEGAL AID—CRIMINAL

"Legal Aid in Criminal Cases", Martin V. Callagy, *Journal of Criminal Law, Criminology and Police Science*, Vol. 42, No. 5, January-February, 1952.

LAWYER REFERRAL SERVICE AND SIMILAR PLANS

"Lawyer Reference Plans, A Manual for Local Bar Associations", Charles O. Porter, published for the Survey by Poole Bros., Inc., 1949.

"Answers to Objections to Lawyer Reference Service", Charles O. Porter, *Oregon Law Review*, December, 1949.

"The Neighborhood Law Office Plan", Robert D. Abrahams, *Wisconsin Law Review*, July, 1949; "The New Philadelphia Lawyer", revision of above, *Atlantic Monthly*, April, 1950.

"Legal Service Offices for Persons of Moderate Means", Reginald Heber Smith, *Wisconsin Law Review*, May, 1949; revised and published in pamphlet form for the Survey by Court Square Press, Inc., Boston, 1950.

Division II
Public Service by Lawyers

A. *War Work and Service to Armed Forces*

"Lawyers as Operations Analysts in the Army Air Forces in World War II", W. Barton Leach, *Boston University Law Review*, Vol. XXXII, No. 4, November, 1952; see also *Law Review Digest*, Vol. 1, No. 1, November-December, 1952.

"Lawyers and National Defense", George A. Brownell, *Harvard Law School Bulletin*, December, 1951. (Adopted) *See Note, page 555.*

"Legal Assistance for Servicemen", Milton J. Blake, published for the Survey by The Lord Baltimore Press, 1951.

"Wartime Work by Lawyers for the Navy: A Tribute to Lawyers-at-Arms", Admiral Louis E. Denfeld (Ret.), *A.B.A.J.*, April, 1951.

"Naval Procurement During World War II: Its Legal Aspects", J. Henry Neale, *A.B.A.J.*, March, 1952.

B. *Legislation, Civil Service, Municipal Affairs*

"Lawyers and the Legislative Development of the Law", Harry W. Jones, (In three parts):

Part I (condensed) entitled:; "Lawyers as Elected Legislators", *A.B.A.J.*, July, 1951;

A portion of Part I and all of Part II, *The Brief*, Winter, 1952;

Part III entitled: "Bill-Drafting Services in Congress and the State Legislatures", *Harvard Law Review*, January, 1952.

"The Lawyers' Contribution to the Merit System", H. Eliot Kaplan, *Good Government*, July-August, 1951.

"Public Service by Lawyers in Local Government", Murray Seasongood, *Syracuse Law Review*, Spring, 1951.

C. *Other Fields*

"A Study of Unauthorized Practice", Edwin M. Otterbourg, published for the Survey by *Unauthorized Practice News*, September, 1951, (Special Issue).

"Public Relations Programs of the Bar: An Analysis of the Problem and the Solution", George Maurice Morris, *A.B.A.J.*, February, 1952; see also *New York State Bar Bulletin*, April, 1952.

"Public Service by Lawyers in the Field of Divorce", Judge Paul W. Alexander, *Ohio State Law Journal*, Vol. 13, Winter Issue, 1952.

"Arbitration and the Legal Profession", Frances Kellor, published for the Survey by the American Arbitration Association in a special pamphlet (undated); see also *Case and Comment*, Vol. 57, No. 5, September-October, 1952.

Division III
Judicial Service and Its Adequacy

"Cases and Materials on Modern Procedure and Judicial Administration", Arthur T. Vanderbilt, Washington Square Publishing Corp., New York, 1952. (Adopted) *See Note, page 555.*

"Minimum Standards of Judicial Administration", edited by Arthur T. Vanderbilt, Law Center of New York University, 1950. (Adopted) *See Note, page 555.*

"Minimum Standards of Judicial Administration: The Extent of Acceptance", Charles O. Porter, *A.B.A.J.*, August, 1950.

"A Survey of Judicial Councils, Judicial Conferences and Administrative Directors", Maynard E. Pirsig, *The Brief*, Vol. 47, No. 3, Spring, 1952.

"The Cost of Justice", Harry D. Nims, *A.B.A.J.*, June, 1953.

Division IV
Professional Competence and Integrity

A. *Legal Education*

"Legal Education in the United States", Albert J. Harno, published for the Survey by Bancroft-Whitney Company, 1953.

"A Report on Prelegal Education", Arthur T. Vanderbilt, *New York University Law Review*, April, 1950.

"Loan Plan for Law Students", Reginald Heber Smith, *Quarterly Report of the Conference on Personal Finance Law*, Spring, 1951.

"Loans to College Students", John U. Monro, *Quarterly Report of the Conference on Personal Finance Law*, Winter, 1951-52.

"Loans for Law School Students", A summary of the report of the Conference on Personal Finance Law Loan Plan Committee, *Quarterly Report of the Conference on Personal Finance Law*, Fall, 1952.

"Loans for Law Students", A report to the Survey by a Committee of the Conference on Personal Finance Law, consisting of Jackson R. Collins, Chairman; Frank L. Hinckley, Paul H. Williams, Randolph W. Thrower, *Journal of Legal Education*, Vol. 5, No. 3, 1953.

"The Materials of Law Study", Brainerd Currie, *Journal of Legal Education*, Vol. 3, No. 3, Spring, 1951.

"The Case Method", Edmund M. Morgan, *Journal of Legal Education*, Vol. 4, No. 4, Summer, 1952.

"College and Law School Education of the American Lawyer—Part I", Albert P. Blaustein, *Journal of Legal Education*, Vol. 3, No. 3, Spring, 1951.

"College and Law School Education of the American

Lawyer—Part II", Albert P. Blaustein, *Journal of Legal Education*, Vol. 4, No. 3, Spring, 1952.

"Correspondence Law Schools", Elbridge B. Pierce, *Journal of Legal Education*, Vol. 4, No. 2, Winter, 1951.

"Some Problems of Metropolitan Law Schools Having Day and Night Divisions", Lowell S. Nicholson, *Journal of Legal Education*, Vol. 4, No. 2, Winter, 1951.

"Legal Education in Georgia", John W. Morland, *Mercer Law Review*, Vol. 2, No. 2, Spring, 1951.

"Legal Education and Admissions to the Bar in Pennsylvania", Lon L. Fuller, *Temple Law Quarterly*, Vol. 25, No. 3, January, 1952.

"The Law Schools of Tennessee", Elliott E. Cheatham, *Tennessee Law Review*, April, 1950; see also *Vanderbilt Law Review*, April, 1950.

"The Modern Law Center", Robert G. Storey, *Southwestern Law Journal*, Fall, 1950.

"What Lawyers Read", Albert P. Blaustein, *New York State Bar Association Bulletin*, Vol. 22, No. 5, October, 1950; see also *Journal of Bar Association of State of Kansas*, February, 1951.

"The Professional Associations and Legal Education", Russell N. Sullivan, *Journal of Legal Education*, Vol. 4, No. 4, Summer, 1952.

"The Libraries of the Legal Profession", William R. Roalfe, published for the Survey by West Publishing Company, 1953.

"The Work of the Practising Law Institute: A Lawyer's Education Never Stops", Arthur A. Ballantine, *A.B.A.J.*, October, 1952.

B. *Admission to the Bar*

"Bar Examinations and Requirements for Admission to the Bar", James E. Brenner, published for the Survey by Shepard's Citations, 1952.

"Who Shall Be Called to the Bar", Homer D. Crotty, *Los Angeles Bar Bulletin*, Vol. 26, No. 9, May, 1951, (Abridged); see also *The Bar Examiner*, Vol. XX, No. 4, July, 1951.

"Requirements for Admission to Practice in the Federal Courts", Homer D. Crotty, *The Bar Examiner*, Vol. XIX, No. 5, September, 1950.

"The Accreditation of Law Schools", Homer D. Crotty, *The Bar Examiner*, Vol. XIX, No. 4, July, 1950.

"Admission of Attorneys from Other Jurisdictions", Goscoe O. Farley, *The Bar Examiner*, Vol. XIX, No. 5, September, 1950.

"The National Conference of Bar Examiners", Marjorie Merritt, *The Bar Examiner*, Vol. XVIII, No. 5, August, 1949.

"Bar Examinations: Should They Be Nationally Administered?", Herbert W. Clark, *A.B.A.J.*, December, 1950.

"Administration, Preparation, and Grading of Bar Examinations", Shelden D. Elliott, *The Bar Examiner*, Vol. XIX, No. 3, May, 1950.

"Scope and Subject Content of Bar Examinations" George Neff Stevens, *The Bar Examiner*, Vol. XIX, No. 3, May, 1950.

"Bar Examinations as Testing Devices", Harold Shepherd, *The Bar Examiner*, Vol. XIX, No. 2, March, 1950.

"Requirements for Admission to Practice Law—Statutes, Rules, Regulations, and Correspondence Schools, Law Office Study, Private Study" Marion R. Kirkwood, *The Bar Examiner*, Vol. XX, No. 1, January, 1951.

"Requirements for Admission to Practice in England, Ireland, the Australian States, New Zealand and the Canadian Provinces", Eustace Cullinan, *The Bar Examiner*, Vol. XIX, No. 1, January, 1950, Part I; *The Bar Examiner*, Vol. XIX, No. 2, March, 1950, Part II.

"Character Investigation—An Essential Element of the Bar Admission Process", Will Shafroth, *The Bar Examiner*, Vol. XVIII, No. 6, October, 1949.

"Standards of Admission for Practice Before Federal Administrative Agencies", F. Trowbridge vom Baur, published for the Survey by Prentice-Hall, Inc., 1953.

C. *Professional Ethics, Discipline, and Disbarment*

"Conduct of Judges and Lawyers", Orie L. Phillips and Philbrick McCoy, published for the Survey by Parker and Company, 1953.

"Character Requirements for Admission to the Bar", John G. Jackson, *Fordham Law Review*, Vol. 20, December, 1951; see also *The Bar Examiner*, Vol. 21, No. 4, July, 1952.

"Judicial Conduct and Judicial Selection", Philbrick McCoy, *Southern California Law Review*, Vol. XXIV, No. 1, December, 1950.

"Discipline of Judges", Frederic M. Miller, *Michigan Law Review*, Vol. 50, No. 4, March, 1952.

"Report on Observance by the Bar of Stated Professional Standards", Robert T. McCracken, *Virginia Law Review*, Vol. 37, April, 1951.

"The Inculcation of Professional Standards and the Functions of the Lawyer", Elliott E. Cheatham, *Tennessee Law Review*, June, 1951; see also *The Bar Examiner*, Vol. XXI, No. 2, March, 1952.

"Professional Ethics at the University of Illinois", Albert J. Harno, *Tennessee Law Review*, June, 1951; see also *The Bar Examiner*, Vol. XXI, No. 2, March, 1952.

"The Inculcation of Professional Standards at Southern Methodist University School of Law", Whitney Robson Harris, *Tennessee Law Review*, June, 1951; see also *The Bar Examiner*, Vol. XXI, No. 2, March, 1952.

"Laymen on the Competency and Integrity of Lawyers", Henry S. Drinker, *Tennessee Law Review*, Vol. 22, No. 3, April, 1952.

"Complaints Against Lawyers", Reginald Heber Smith, First Edition—February, 1949 (Mimeographed); Second and Revised Edition to be published for the Survey by Little, Brown & Company _____ 1953.

Division V
Economics of the Legal Profession

A. *Number and Distribution of Lawyers*

"Statistical Report on the Lawyers of the United States: Parts I and II", James V. Martindale, Edward J. Nofer and William Hildebrand, Jr., July, 1949. (Based on the 1949 Martindale-Hubbell Law Directory).

"Statistical Report on the Lawyers of the United States: Part III—Law Schools", James V. Martindale, Edward J. Nofer and William Hildebrand, Jr., December, 1949.

"Statistical Report on the Lawyers of the United States", Special Abridged Edition, James V. Martindale, Edward J. Nofer and William Hildebrand, Jr., August, 1949.

Reports based on the 1949 Statistical Report:

"Lawyers at Work", Albert P. Blaustein, *Journal of the American Judicature Society*, Vol. 33, No. 6, April, 1950.

"The 1949 Lawyer Count: A Preliminary Statement", Albert P. Blaustein, *A.B.A.J.*, May, 1950.

"The 1949 'Lawyer Count'—The New York Report", Albert P. Blaustein, *New York State Bar Association Bulletin*, Vol. 22, No. 1, February, 1950.

"New York City Lawyer Statistics", Albert P. Blaustein and Howard S. Kaplan, *New York County Lawyers Association Bar Bulletin*, Vol. 8, No. 1, May, 1950.

"America's Women Lawyers—The 1949 'Lawyer Count' ", Albert P. Blaustein and Howard S. Kaplan, *Women Lawyers Journal*, Vol. XXXVII, No. 2, Spring, 1951.

"Second Statistical Report on the Lawyers of the United States", James V. Martindale, Edward J. Nofer and William Hildebrand, Jr., (Based on material in the 1952 Martindale-Hubbell Law Directory), February, 1952.

Report based on the Second Statistical Report:

"The Legal Profession in the United States: A 1952 Statistical Analysis", Albert P. Blaustein, *A.B.A.J.*, December, 1952.

B. *Income and Expenses of Lawyers*

"Income of Lawyers, 1929-48", William Weinfeld, U. S. Department of Commerce, *Current Business*, August, 1949.

"Lawyer Bankruptcies", Charles O. Porter, *Journal of the National Association of Referees in Bankruptcy*, Vol. 24, No. 3, July, 1950; see also *Case and Comment*, Vol. 56, No. 4, July-August, 1951.

"Report of the Committee on the Survey of the Legal Profession for Pennsylvania", Robert L. Kunzig, *Pennsylvania Bar Association Quarterly*, Vol. XXIII, No. 4, June, 1952.

"Social Security and Retirement Plan for Lawyers: It Need Not Mean Socialism", Harold O. Love, *A.B.A.J.*, June, 1952.

"The Economics of the Legal Profession in Massachusetts", Robert M. Segal, *The Bar Bulletin* (Boston), Vol. 23, No. 3, March, 1952.

"The Economics of the Legal Profession: An Analysis by States", Robert M. Segal and John Fei; Part I, *A.B.A.J.*, February, 1953; Part II, *A.B.A.J.*, March, 1953.

C. *Organization for Law Practice*

"Organization for the Practice of Law", Eugene C. Gerhart, *The Brief*, Vol. 46, No. 3, Spring, 1951; see also *A.B.A.J.*, October, 1951; *New Jersey Law Journal*, Vol. LXXV, No. 4, January 24, 1952; *Law Review Digest*, Vol. 2, No. 1, November, 1951.

"Placement in the Legal Profession: A Responsibility of the Organized Bar", Louis A. Toepfer, *A.B.A.J.*, July, 1951.

"Women in the Law", Barbara L. Armstrong, *The Harvard Law School Record;* Part I, December 6, 1951; Part II, December 13, 1951.

Division VI
The Organized Bar

A. *Bar Associations*

"The Lawyer from Antiquity to Modern Times", Roscoe Pound, published for the Survey by West Publishing Company, 1953.

"History of the American Bar Association and Its Work", Edson R. Sunderland, (With a Concluding Chapter on "The Committee on Scope and Correlation of Work and Its Program", by William J. Jameson), published for the Survey by The Lord Baltimore Press, 1953.

"Methods of Strengthening Bar Associations", Howard L. Barkdull, *Journal of the American Judicature Society*, Vol. 35, No. 1, June, 1951.

"Dean Pound and Bar Association Beginnings: A Survey Request for Primary Data", Charles O. Porter, *A.B.A.J.*, April, 1951.

"The Junior Bar", James D. Fellers, *Rocky Mountain Law Review*, _____, 1953.

"The Organized Bar in Massachusetts", Lowell S. Nicholson, published for the Survey by The Standard Diary Company, 1952.

"The Organized Bar in Chicago", George W. Gale, *Chicago Bar Record*, September, 1950.

"The Organized Bar in Columbus", Earl F. Morris, *Ohio Bar*, Vol. XXIV, No. 32, August 6, 1951.

"The Association of the Bar of the City of New York 1870-1951", *The Record*, Vol. 6, No. 6, June, 1951.

"NYCLA—Giant of Bar Associations", Albert P. Blaustein, *New York County Lawyers Association Bar Bulletin*, Vol. 9, No. 1, May, 1951.

"New York Bar Associations Prior to 1870", Albert P. Blaustein, *New York Law Journal*, Vol. 125, No. 64, Tuesday, April 3, 1951, and Wednesday, April 4, 1951.

"The Organized Bar in Philadelphia", Meredith Hanna, *Temple Law Quarterly*, Vol. 25, No. 3, January, 1952.

"The Organized Bar in North Carolina", Edwin C. Bryson, *The North Carolina Law Review*, Vol. 30, No. 4, June, 1952.

"Manual for Bar Associations", Glenn R. Winters, to be

published for the Survey by The Lord Baltimore Press, _____, 1953.

"The Organized Bar in Los Angeles", Clinton Clad and Harned Pettus Hoose, *Los Angeles Bar Bulletin*, Vol. 28, No. 1, October, 1952.

B. *Other Organizations and Associations of Lawyers*

"National Association of Women Lawyers", Charlotte E. Gauer, *Women Lawyers Journal*, Vol. XXXV, No. 4, Fall, 1949.

"Report on the Federal Bar Association", James E. Palmer, Jr., *The Federal Bar Journal*, Vol. XI, No. 2, January, 1951.

"Patent Law Associations: The American Patent Law Association, National Council of Patent Law Associations", John A. Dienner, *Journal of the Patent Office Society*, Vol. XXXII, No. 11, November, 1950.

"The Story of the American Law Institute", Herbert F. Goodrich, *Washington University Law Quarterly*, Vol. 1951, No. 3, June, 1951; see also *Law Review Digest*, November, 1951.

"National Association of Claimants' Compensation Attorneys", Samuel B. Horovitz, *NACCA Law Journal*, Vol. 8, November, 1951.

"The American Law Student Association: Developing Future Leaders of the Bar", James M. Spiro, *A.B.A.J.*, May, 1952.

"Legal Fraternities", Kenneth H. York, *Michigan Law Review*, Vol. 50, No. 7, May, 1952.

C. *The Bar in Other Countries*

"The Legal Profession in England and Wales", Thomas G. Lund, *Journal of the American Judicature Society*, Vol. 35, No. 5, February, 1952.

"Law Practice in France", Pierre Georges LePaulle, *Columbia Law Review*, Vol. 50, November, 1950.

"The Legal Profession in Italy", Angelo Piero Sereni, *The Harvard Law Review*, Vol. 63, No. 6, April, 1950; see also *Case and Comment*, Vol. 56, No. 6, November-December, 1951.

"Law Practice in Russia: The Organized Bar in the U.S.S.R.", John N. Hazard, *A.B.A.J.*, March, 1949; see also *Lawyers Guild Review*, Summer, 1949.

"The Organized Bar in Switzerland", Paul Lachenal, *A.B.A.J.*, February, 1953.

General Reports About the Survey

"Models, Media and Men", Charles O. Porter, *Journal of the American Judicature Society*, February, 1950.

"Exorcising the Socialization Spectre", Charles O. Porter, *Lawyers Guild Review*, Vol. X, No. 1, Winter, 1950.

"Survey of the Legal Profession", Arthur T. Vanderbilt, 72 *A.B.A. Reports* 349-352, 1947.

"Survey of the Legal Profession: Council and Director Announce Definitive Plans", *A.B.A.J.*, November, 1947.

"Survey of Our Profession: 'Progress Report' as to Organization and Work", *A.B.A.J.*, September, 1948.

"Survey of the Legal Profession: Second Progress Report", *A.B.A.J.*, September, 1949.

"Survey of the Legal Profession: Third Progress Report", *A.B.A.J.*, September, 1950.

"The Survey of the Legal Profession: Final Progress Report", *A.B.A.J.*, September, 1951.

"The Survey of the Legal Profession", Lowell S. Nicholson, *The Bar Bulletin* (Boston), March, 1948.

"Survey of the Legal Profession", *U. S. Law Week*, October 19, 1948.

"Survey of the Legal Profession", Joseph Bear, *Journal of the Law Society of Massachusetts*, November, 1948.

"Surveying the Legal Profession: In Whose Interest, How, and To Test What Hypotheses?", Charles O. Porter, *Journal of the American Judicature Society*, February, 1949.

"Survey of the Legal Profession—An Effort at Objective Appraisal", Paul Brosman, *Tulane Law Review*, June, 1949.

"Survey of the Legal Profession: The Legal Education Phase", Albert J. Harno, *Journal of Legal Education*, Summer, 1949.

Final Reports

The Director's final report will be entitled "The Legal Profession in the United States" and will be published by Little, Brown & Company.

The Layman's Final Report on the Survey will be written by George Waverley Briggs, Vice President and Trust Officer at The First National Bank in Dallas. Announcement as to the publisher and time of publication will be made later.

Note as to Adopted Reports

The meaning and significance of "adopted reports" was stated in our Third Progress Report, A.B.A.J., September, 1950, as follows:

A word of explanation is in order about a few reports which the Survey has "adopted". An illustration is the epoch-making book, *Minimum Standards of Judicial Administration*, by Chief Justice Arthur T. Vanderbilt. Division III of the Survey is *Judicial Service and Its Adequacy*. Knowing of the magnificent work that the American Bar Association's Section of Judicial Administration had been carrying forward for a decade, the Council decided not to duplicate that undertaking. Instead it asked permission of the authors to adopt their work and make it part of the material on which the Survey's final report will be based.

For any "adopted" reports the Survey is entitled to no credit; they are included in our lists only for the sake of completeness. The Survey sponsors such reports exactly as it does its own, gives them as much publicity as it can, and the Survey team uses them as authoritative materials.

It was not feasible for the Survey to send copies of adopted reports to persons and libraries on the Survey mailing list.

Preventive Law and Public Relations:

Improving the Legal Health of America

by Louis M. Brown • of the California Bar (Los Angeles)

■ Mr. Brown believes that the organized Bar is passing up its greatest opportunity for improving public relations and for serving the community. Declaring that the medical profession has built tremendous good will by educating the public on preventive medicine, he urges the legal profession to promote preventive law, a field which, he declares, has been too long neglected and unknown. This article is taken from an address delivered before the Section of Bar Activities at the last Annual Meeting in San Francisco.

■ Preventive law is still an infant. Fourteen years ago the Committee on Professional Ethics and Grievances of the American Bar Association first recognized the concept of preventive law by permitting a local bar association to advertise the "benefits and advantages of preventive legal services" because, the opinion states, preventive law "will enhance the public esteem of the legal profession and create a better relation between the profession and the general public".[1] What has happened in these fourteen years?

Legal hygiene is that segment of preventive law which states the rules of legal health. The Hamilton County Bar Association ran an ad "Demand His Credentials",[2] advising each member of the public to demand the credentials of the census taker before permitting him to enter his home. This isn't a rule of law: it's a rule of legal health which we of the Bar should make known to the public. One bar association did.

There are times and situations when a lawyer can best perform preventive services. For example, when a client is buying a home or a business, when he is making a lease, and so on. And there are documents which are largely preventive in character, chief among them is a will.

The Atlanta Bar Association put on a television show called "Frederick Ashley, Attorney-at-law", and four large Atlanta banks paid the cost of the program. The show depicts the part the lawyer plays in drawing wills and planning estates. Though I have not seen the program, it assuredly must be grounded in preventive law. But what interests me most is the fact that this program takes place inside a lawyer's office, the habitat of the preventive lawyer. So many of our motion pictures and so many news items in our newspapers depict the lawyer in trial scenes that it is refreshing to find at least one program showing the lawyer at work in his law office. It is not that motion pictures and newspapers are at fault in depicting the lawyer in the courtroom because, assuredly, the courtroom is more nearly the place where news is made and where legal drama in a public sense occurs. But this has given the public the incorrect notion that the normal habitat of the lawyer is the courtroom. One of the important functions of a public relations program in this field is to draw the public's attention to the law office as the place where a lawyer functions. In this connection, another interesting observation can be made. About 100 educational films are described or listed in the book by our Association's Committee on Public Relations. It does not appear that a single one of them shows the lawyer in his law office. Yet the law office is the place where constructive law is practiced by lawyers who daily work with the live facts of preventive law.[3]

Legal "First Aid" Deserves More Attention

Legal first aid, or what to do until the lawyer comes, certainly deserves more attention than has been given

1. Opinion 179 (1938).

2. This advertisement and many of the pamphlets, speeches, radio and television shows referred to are listed in the preliminary draft of the book, *Public Relations for Bar Associations*, prepared by the Standing Committee on Public Relations of the American Bar Association, Richard P. Tinkham, editor.

3. A law office is, of course, a place where a lawyer prepares for trial. But trial preparation is not the essence of preventive law. Typical situations of the preventive law office lawyer are those which do not involve litigation—drawing wills, drafting various contracts, advising on corporate affairs, and so on. It is these preventive law practices occurring in the law office which should be illustrated in educational films.

to it. There are emergency situations which arise that call for prompt work of a legal nature and the layman is entitled to be informed as to what he should do. So some bar associations have, by speeches, by radio and by pamphlets, tried to inform the public what to do in case of an auto accident. This is a fertile field and more can be done.

Legal knowledge for the layman is the largest area of preventive law within our present knowledge of the subject. And we seem to have devoted most of our attention to it. I classify the Los Angeles Bar Association's pamphlet "How To Employ an Attorney"[4] in this category.

When you think in terms of individuals in our society, you will realize that any individual can, theoretically at least, employ an attorney, before he becomes involved in any matter which has legal consequences, except with respect to one kind of transaction. That one kind is the legal obligation to pay fees which a client undertakes when he engages a lawyer. In this one situation a client must, to some extent, be his own lawyer. Theoretically, he can never employ a lawyer for the purpose of employing a lawyer. Hence, the Bar owes a duty to the individual members of our society to educate them regarding their legal obligations when they undertake to employ and retain an attorney.

There are numerous daily activities, like driving an auto, where the layman must know the rules of law. Hence, Minnesota's pamphlet on, "Traffic Law", and the Dane County (Wisconsin) Bar Association's on "Where Am I Allowed To Hunt?", and the Texas Bar's, "Check Rooms and 'Not Responsible' Signs". This kind of practical information about the law is necessary if people are to avoid common errors and mistakes. We of the Bar are charged with knowledge of the law and where that knowledge is publicly important we should make it known to the public.

Our Present Knowledge Is Primitive

Our infant is still in diapers. We should not be misled into high hopes for the present status of preventive law in public relations programs.

Our present knowledge of preventive law is primitive. All our vast law libraries and most of our vast learning about the law does not concern itself with preventive law. Rather it is concerned with curative law. Most of us never heard about preventive law until recently. Most of us certainly learned nothing about it in law school for when we went to law school, nothing about it was taught. We studied cases in the Langdellian tradition. The case, our fundamental legal authority, decides a controversy and sets down a rule for the decision of future litigation. On its face it does not establish rules of legal health or principles of preventive law, though a case studied in the light of preventive law can lead us to the discovery of rules for the avoidance of litigation. So far as I am aware, not one law school in the country has a course in preventive law, although fortunately some professors are beginning to integrate preventive law notions in existing courses. I might say, however, that more than twenty colleges and some adult education high schools which teach law to nonlawyers have a course in preventive law.[5]

There are innumerable experiences of law office lawyers, and developing experiences of the newly created preventive lawyer—the house counsel[6]—which demonstrate that preventive law is practiced. We might be able to prove this. We could, for example, survey one hundred or a thousand recently litigated contract cases to determine how many arose out of layman-drafted contracts and how many out of lawyer-drafted contracts. Let us determine how much of such litigation arose because of failure to obtain professional guidance. Let us determine, too, how many curative legal problems come to legal aid and lawyer reference that could have been avoided by preventive practice. Such surveys could be the basis for some interesting material for external public relations—relations between the Bar and the public. I should expect surveys to reveal that professional guidance is really preventive. But if they indicate a different result, we should have basic material for internal public relations—relations between the Bar and lawyers. In that event we ought to concentrate some attention on preventive law in our continuing education programs. Granted that preventive law is good external public relations, it can be no better than lawyers' skills in practicing it.

The Public Must Be Informed

But our baby is beginning to talk. Local bar associations which have not engaged in public relations activities can start with materials already used by others. There are at least two aspects to any project. One is to get it in shape. The other is to see that the public gets it—distribution. In fact, if a local bar association attends to distribution, it performs the really vital task of getting the story to the public. In other words, we can do more of what some bar associations already are doing.

We might also expand our activities to include the publication of a magazine—a legal *Hygeia* or *Today's Health*—for laymen, as the University of Miami Law School is now doing with its magazine—*Civic Forum—Law for the Layman*. And we can strive for more new activities—activities in which the layman can participate.

We are prone to compare ourselves favorably or unfavorably with our brother profession, the medical profession. Many of us feel that the medical profession has made far greater strides in the public relations field than we have. Some venture to

4. This is a pamphlet version of Chapter 25 of the author's *Manual of Preventive Law* (Prentice-Hall, 1950).

5. The American Bar Association might consider investigation and analysis of the various high school and college courses offered in business and commercial law. The interest which the Association has taken in improving legal and prelegal education has been fruitful. A similar interest might be taken regarding law courses given for the nonlawyer. The number of nonlawyer students studying law far exceeds the number of law students.

6. Maddock, *The Corporation Law Department*, 30 *Harv. Bus. Rev.* 119 (March-April, 1952).

guess that this is so because the doctors spend more money on public relations than we do. I feel that there is a more basic reason. The basic reason is that the public is convinced that the medical profession has done a great deal and can do a great deal more in the field of preventive medicine.

The public has not come to believe that the legal profession has done or can do very much about preventive law. My opinion is that the favorable attitude toward the medical profession does not arise because the medical association has engaged in large scale public advertising or public relations programs but rather because the layman has taken a vast interest in medical problems. He has the real hope that the medical profession, and the scientists who surround it, can effectively help curtail the incidence of disease. What we need to do is to invent and develop those projects in the preventive law field which would interest the layman. We ought to encourage him to participate in problems regarding the practice of law.

For purposes of illustration let me try to be concrete. Let us imagine a campaign in which each attorney in a local association pledges to prepare a will, without charge, for any person married in the county in August, 1953. The campaign might be called "Will for Newly Married".[7] Such a project is (a) preventive law because it is educating clients before they are in trouble to use the services of an attorney; (b) constructive because it serves to illustrate that lawyers can play an important role in efforts to build a solid family life; (c) capable of drawing attention to the law office as the place where living law is practiced, and (d) capable of interesting the lay groups because assistance can be sought of lay organizations to help foster the campaign.

But preventive law is not limited in scope to the individual lawyer's practice and to rules of legal hygiene and first aid for the individual. It encompasses problems of large public significance. From society's point of view it means that we must constantly develop methods to prevent the spread (contagion) of large scale legal trouble (disease). I mean crime prevention to which attention is directed, though not generally as bar public relations. I mean those successful efforts to prevent large scale fraud through such means as blue sky and pure food and drug laws, though we have not used such successes as public relations material. I mean the kind of thing that the New York County Lawyer's Association has done in showing how public preventive law can be a public relations program. That association has had, and I hope will continue to have, Conferences on Preventive Law To Safeguard the Children of Unstable Families and Conferences on Law, Medicine and the Unstable Family.[8] Nonlawyers were invited to, and did, participate in those conferences.

Such projects are precisely the kind of things that happen in the medical profession. The great drives to prevent tuberculosis by offering free chest X-rays is only one such project in medicine. Free vaccination is another. Free tests for diabetes are yet another. Cancer associations, heart associations, tuberculosis associations are organized by laymen who raise large sums for medical research because, as I believe, laymen have the real hope, already proved a hundredfold, that the medical profession, and the scientists who surround it, can effectively curtail the incidence of disease. Yes, we might take a leaf from the medical profession's book. We shall begin to command the greatest public esteem when we find laymen organizing drives, raising money, and creating public interest in projects seeking to improve the legal health of individuals.

Louis M. Brown has been a member of the California Bar since 1933. A graduate of the University of Southern California and of the Harvard Law School, he is the author of *Manual of Preventive Law* (published by Prentice-Hall in 1950) and of numerous articles in law reviews and other legal periodicals.

7. See Brown, "Will for 21—A Public Relations Project for the Bar", 34 *J. Am. Jud. Soc.* 116 (1950).
8. Wherry, "Preventive Law and the Unstable Family", 5 *N. Y. State Bar Assoc. Bull.* 401 (1949); Wherry, "Conference on Preventive Law", 5 *Bar Bull. N. Y. Co. Lawyers' Assoc.* (March, 1950).

Committee on Law Lists

■ On February 9, 1953, the Standing Committee on Law Lists issued a certificate of compliance to the Legal Directories Publishing Company, 1072 Gayley Avenue, Los Angeles, 24, California, for the 1953 Edition of the Arkansas-Louisiana Legal Directory.

Repatriation of Prisoners of War:

The Legal and Political Aspects

by Carl E. Lundin, Jr. • Office of the Judge Advocate General of the Navy*

■ The lot of prisoners of war has always been harsh. In ancient times, prisoners were tortured and sold as slaves, and even in our times, which we like to call enlightened, a prisoner's fate often depends upon the whim of his captors, as recent events in the Far East have again demonstrated. Commander Lundin wrote this article in the early spring, while the truce talks at Panmunjom were in recess. In view of the notorious ability of the Communists to change their policy at a moment's notice according to the newest direction of the Kremlin wind, it is impossible to say whether the subject matter of this article will be as timely when it appears as when it was accepted for publication or as when this issue of the *Journal* went to press, at the end of May. It seems fairly sure, however, regardless of the status of the Korean conflict, that the larger aspects of the problem of the legal status of prisoners of war will remain to be solved.

■ The issue of repatriation of prisoners of war has been one of the most difficult aspects of the entire troubled problem of trying to bring peace to Korea. At one time it appeared that this issue was the sole remaining stumbling block in the way of an early cessation of hostilities. Now, however, it looks as if the opponents of the United Nations forces are in no hurry to reach a solution, and it may be that the prisoner of war issue was merely seized upon as a convenient means of prolonging the already extended armistice negotiations. In any event, the prisoner of war problem is a real one that will have to be solved if there is to be an end to the fighting. At the present time armistice negotiations are in recess due to the prisoner of war impasse.

The United Nations Command originally sent the names of some 170,000 persons to the International Committee of the Red Cross, representing prisoners held. Subsequently, about 48,000 of these people were released as being civilians or Republic of Korea citizens, not properly classified as prisoners of war. Accordingly, as of October, 1952, the United Nations Command held about 121,000 persons as prisoners of war. The Communists announced in early 1951 that they had captured 65,000 persons. However, when they finally listed their prisoners, only 11,500 were named, the discrepancy being accounted for by persons who had been "re-educated" at the front and presumably released, when they had seen the light, to join the North Korean Army. These figures are taken from the report of Secretary of State Dean Acheson to the United Nations on October 24, 1952.[1]

In the course of interrogation and screening of the prisoners held by the United Nations Command, it was learned that substantial numbers did not want to be exchanged and would in fact violently resist repatriation. As a result of this screening, largely by United States military personnel, some 83,000 prisoners have been classified as available for repatriation, leaving about 38,000 who do not want to be exchanged. The problem is what to do about this latter class of prisoners of war.

Geneva Conventions Seek Amelioration of Prisoners' Lot

The lot of the prisoner of war has never been a happy one, from ancient times when he was slaughtered or enslaved,[2] down to modern conditions of total war. It is a sad fact that the treatment of prisoners of war has often depended on whether there existed opportunity for reprisal against captured personnel of the detaining power. And even this sanction broke down in the case of a nation like Japan, which apparently cared nothing in World War II about what happened to its people who became prisoners of war.[3] There have been

*The opinions and assertions contained in this article are the private views of the author and are not to be construed as official or as reflecting the views of the Department of Defense, the Navy Department or the naval service at large.

1. *The Problem of Peace in Korea*, Department of State Pub. 4771, October, 1952.
2. Flory, *Prisoners of War* (1942) pages 10-12.
3. *Prisoners of War*, Institute of World Polity (Georgetown University, 1948) page 18.

various attempts to ameliorate the conditions of prisoners through international conventions, culminating in the Geneva Conventions of 1929 and 1949.

The Geneva Convention of July 27, 1929, is to be respected by the High Contracting Parties under "all circumstances".[4] The Korean action, initiated without the benefit of any declarations of war, has been variously termed a police action, a war of aggression and a prelude to World War III. Whatever may be one's views as to the appropriate description, it seems to be a situation for the application of the Convention of 1929 and of the laws of war.

The Geneva Convention of 1949 applies "to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties . . . ."[5] The 1929 Convention has been ratified by the United States and by many of the nations now supporting the United Nations forces in Korea. It has not been ratified by Russia.

Article 75, Section 1 of the 1929 Geneva Convention provides:

> When belligerents conclude an armistice convention, they shall normally cause to be included therein provisions concerning the repatriation of prisoners of war. If it has not been possible to insert in that Convention such stipulations, the belligerents shall, nevertheless, enter into communication with each other on the question as soon as possible. In any case, the repatriation of prisoners shall be effected as soon as possible after the conclusion of peace.

Article 83, Section 1 provides:

> The High Contracting Parties reserve to themselves the right to conclude special conventions on all questions relating to prisoners of war concerning which they may consider it desirable to make special provision.

The 1929 Convention has been with us for over twenty years. It represented the international law applicable to prisoners of war during World War II. Although Flory states that it made, rather than declared, international law,[6] it had certainly become, by 1949, strong evidence of the custom or law of war. However, certain defects and inadequacies which had been disclosed by the war experience with the 1929 Convention led to the calling of another conference at Geneva in 1949, which resulted in four Conventions for the Protection of War Victims, including the Convention of August 12, 1949, relative to prisoners of war.[7] Article 134 thereof provides that it replaces the Convention of July 27, 1929.

The provisions of the 1949 Convention which are pertinent to this paper are the following:

Article 6, which provides in part that:

> . . . the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of prisoners of war, as defined by the present Convention, nor restrict the rights which it confers upon them.

Article 7:

> Prisoners of war may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Article 118, the first paragraph of which reads:

> Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.

The 1949 Conventions have not been ratified by the United States or by Soviet Russia. The Chinese Communist Government and North and South Korea were not even signatories. It accordingly appears that the Prisoner of War Convention is not formally binding on the parties to the present struggle. However, the North Korean Government has declared through its foreign minister that it will abide by the 1949 Convention. And the United States has likewise announced to the International Red Cross an intention to be bound by the humanitarian principles of the Geneva Convention. Many words could be written about whether the Korean affair is an armed conflict between two or more of the High Contracting Parties, whether the Convention binds the United Nations and the other parties to the Korean struggle and other aspects of its applicability. They will not be written here. In view of the declarations by the United States and North Korea, the 1949 Convention will be assumed to be applicable. Irrespective of its formal applicability, Potter takes the position that the principles of Article 118 may be taken as repeating established law.[8] While this position may be open to question, it would at least appear that the 1949 Convention reflected the views of the signatories as to what the law should be.

The language of Article 118 of the 1949 Convention is mandatory and does not appear to leave much room for interpretation. It represents an advance over the 1929 Convention which provided for repatriation "as soon as possible after the conclusion of peace".[9] The object of the contracting powers in 1949 was to eliminate the difficulties which had been disclosed in World War II with the prior convention, where treaties of peace were long delayed after the cessation of fighting, and thousands of prisoners had still not been returned. The emphasis at Geneva in 1949 was all on prompt repatriation. The alternative of permitting prisoners to make a choice was considered but abandoned. The United States took the position that prisoners should not be permitted to refuse repatriation. The result was the strong language of Article 118 and the provision of Article 7 that prisoners may in no circumstances renounce their rights.

Nevertheless, a person searching for an ambiguity in Article 118 can make out some sort of a case for the proposition that it is susceptible of different interpretations. For example, a Communist negotiator could add four words and claim that the proper meaning was as though the Article read "Prisoners of war shall

4. Article 82.
5. Article 2.
6. Flory, *op. cit.*, page 23.
7. The genesis of the 1949 Conventions is set forth in Pictet's article, "*The New Geneva Conventions for the Protection of War Victims*", 45 *Am. J. Intl. L.* 462.
8. Potter, "*Repatriation of Prisoners of War*", 46 *Am. J. Intl. L.* 508.
9. Article 75, §1.

be released and repatriated, *by force if necessary* . . . . " For the opposite interpretation, a similar adding of four words would make the Article read "Prisoners of war shall *have the right to* be released and repatriated . . . " or "Prisoners of war shall be released and, *if they so desire*, repatriated . . . . " These possibilities are an indication that Article 118 is susceptible of different interpretations, although there may have been no doubt in the minds of the representatives of the signatories as to what it meant.

It is doubted that the exact situation which has arisen in Korea was in the minds of the conferees at Geneva. It was of course appreciated that states might desire to withhold prisoners and delay in returning them, as had been the case in World War II. This possibility was what Article 118 was designed to prevent. It was probably not foreseen that in the next major conflict to arise in the world, thousands of prisoners would not only not desire repatriation, but would in fact forcibly resist return to their homeland. In concentrating on the individual prisoner's right to be repatriated, his right *not* to be repatriated was largely ignored. It was probably felt that the unusual case of this nature which might arise could be dealt with under the principles of asylum.

The only freedom of choice given to a prisoner with respect to repatriation under the 1949 Convention is in the case of the sick or wounded. Article 109 provides in its last paragraph "No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities." The draft of this provision submitted to the 17th International Red Cross Conference at Stockholm in 1948 read as follows: "No prisoner of war who is eligible for repatriation may be repatriated against his will during the course of hostilities."[10] However, as finally amended and approved by the Conference, the provision took the form in which it appears in Article 109 of the Convention. The United States objected to the prior draft, but did not object to the final form, which limits the right of choice to the sick or injured. The objection to giving a prisoner a choice is set forth in the article on the Geneva Conventions by Yingling and Ginnane. In considering Article 7 of the Prisoner of War Convention, which provides that prisoners may not renounce their rights, the authors point out that prisoners obviously "are in no sense free to act or able to act freely".[11]

Do POWs Have a Right To Reject Repatriation?

Although many formulae have been advanced with a view toward solving the present impasse in regard to prisoners in Korea, they generally involve one of two principles, forced or voluntary repatriation. There seems to be a general agreement that prisoners have a right to release and repatriation upon the termination of hostilities, and the only question is whether they are to be driven back to their homeland or whether they get a freedom of choice.

In addition to the legal problems, the prisoner of war issue involves political, military and sociological considerations which may be of even greater importance. A satisfactory solution must take into account these considerations. It is proposed here to touch upon some of these further problems, by projecting the two alternative policies with a view to their possible effects on the prisoners themselves, the opposing armed forces and the greater world-wide cold war between the free and Communist worlds.

Forced repatriation of all the prisoners held by the United Nations Command would probably mean torture, slavery or death for a substantial number. At least this seems to be the view of those who have said that they would forcibly resist returning, and they are probably in the best position to judge what going back would mean. On the other hand, insistence on the voluntary principle would leave the United Nations with a group of 38,000 homeless expatriates to provide for upon the end of fighting. If the South Koreans refused to accept them, what would become of them? Are the members of the United Nations prepared to accept them into their countries? A mere statement of the problem indicates its magnitude. The retention of a large number of prisoners to be indefinitely provided for after the fighting ends is certainly not a consummation devoutly to be wished by the victor in modern war, unless his ideals will permit him to impress his captives into involuntary servitude in labor camps.

With respect to the prisoners held by the Communist forces, they would all presumably wish to be repatriated and would stand to gain nothing by insistence upon the voluntary principle. Indeed, such insistence might well result in retaliation, a trumped-up farce of screening and refusal by

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10. *Working Document drawn up for the Diplomatic Conference for the Establishment of International Conventions for the Protection of War Victims Convened at Geneva on April 21st, 1949, by the Swiss Federal Council* (Document No. 3) page 50.

11. Yingling and Ginnane, "The Geneva Conventions of 1949", 46 *Am. J. Intl. L.* 393 at 396, 397.

the Communists to repatriate our soldiers. This is a harsh prospect to put before our military men who are languishing in prisoner camps near the Yalu River. Perhaps the answer would be extremely careful screening of the prisoners on both sides by a disinterested neutral power. Of course, in these days of global conflicts it becomes increasingly difficult to find a neutral to perform such functions and to assume the many duties of a protecting power as set forth in the Geneva Conventions, particularly a neutral who commands sufficient power and prestige.

The effect which a solution of the prisoner issue would have on the conduct of present hostilities is uncertain. Acquiescence in the Communist position of forced repatriation might result in an early termination of hostilities. The end of this fighting is of course much to be desired, but it is by no means sure that an agreement on our part to forcibly return all prisoners would break the deadlock. Our opponents could easily find another means of prolonging the struggle if it seemed to suit their purpose. The answer to this riddle may perhaps only be found behind the walls of the Kremlin.

On the other hand, insistence on the voluntary principle apparently means that the unpopular, indecisive and seemingly interminable war will drag on. It might continue on the present relatively stabilized basis, where the average weekly casualties, although terrible and deplorable, are many fewer than those resulting from a long holiday week-end on the highways of America. Or it might explode into an expanding, all-consuming conflict at the urging of those who profess to see no validity in a war of limited objectives.

It is on the over-all world-wide cold war that the prisoner problem may have its greatest impact. Modern war is in part a war of ideologies —a struggle for the mind of man. And the side which appeals to the reason and captures the mind of an enemy soldier may often capture his body without further struggle.

The solution to the problem of forced or voluntary repatriation in Korea may well set the pattern for future contests. Adoption of the principle of forced repatriation would cut off one of the few remaining avenues of escape from the slave to the free world. As Assistant Secretary of State Hickerson said of our opponents in a speech at Milwaukee on October 24, 1952, "They can drive the reluctant soldier into battle with a bayonet pointing at his back. But what if he escapes by running forward into our lines? What the Communist rulers desperately want is for us to drive him back with *our* bayonets."[12] Such would be the effect of forced repatriation on those prisoners who, disenchanted with life under a communist system, may come to our lines seeking asylum.

On the other hand, insistence on the voluntary principle and its ultimate acceptance could have a tremendous impact on the positions of the great groups of states arrayed against each other in the cold war. The potentials of this policy from the standpoint of psychological warfare are great indeed. For Soviet Russia, despite its own military might, relies heavily in the cold war, and in the hot war of Korea, on the armed forces of its satellites. It seems certain that in the satellite armies and probably also in the Russian army are many soldiers impressed into reluctant service, who would welcome a chance in a future war to escape to the other side. The pressures of a full-scale war might be enough to strain some of the uneasy alliances and even break the admittedly strong ties which bind certain of the satellites and their peoples in the Soviet orbit. Of course, we see in the limited war in Korea that the satellites are still strong enough, without Russia's having committed a single soldier of its own, to wage a powerful war despite the apparent defections of some of their soldiers. But the threat is nevertheless there, and it may well be that uncertainty as to the dependability of its satellites has been a powerful deterrent in dissuading Russia from further aggressions. A policy of encouraging enemy soldiers to surrender and offering them asylum if they refuse repatriation would exploit these potential strains and pressures in the opposing camp.

The Choice Depends Upon Our Basic Objectives

In determining what policy to adopt relative to prisoner of war repatriation we must be guided by the relationship of that problem to the entire cold war, and to the basic objectives of the United States and of the United Nations. These aims of the United States may perhaps be defined as preservation of our society and territory and freedom, whereby the individual may be able to realize to the utmost the fulfillment of his own goal values, in short—security and freedom.[13] Which policy as to prisoners of war more nearly squares with our aims and ideals?

Acceptance of the principle of forced repatriation would eliminate many troublesome questions. We should not have to worry about what to do with the 38,000 prisoners we hold who do not want to go back. Our prisoners held by the Communists would presumably be returned without question and the war in Korea might be brought to a swift end. We should be acting in accord with the letter of Article 118 of the 1949 Geneva Convention.

The alternative principle of voluntary repatriation leaves us facing the problems of what to do about the 38,000, how to get our prisoners back and how to bring the war to an end. There may be retaliation and refusal to return our own prisoners held by the Communists. We may be setting a precedent which could later be distorted and turned against us. Serious as these difficulties are, they must be weighed against the great possibilities for good which might be expected to result from acceptance of the voluntary principle. The chance for asylum in the free world is the last, best hope of many behind the

12. Department of State Press Release 836, October 24, 1952, page 6.

13. See Langer, "American Objectives", *Naval War College Review*, September, 1952, page 14.

Iron Curtain who would be free. And by giving a right *not* to be repatriated to such of those as come into our hands as prisoners, we leave open a passage-way to freedom and wield a powerful weapon in the cold war. This is a bold affirmative policy which tries not merely to contain the Communist threat but rather to overcome it. To those who escape from tyranny we hold out a hope and a promise that we will not take away their new-found freedom by driving them back to their former despotic masters. The possibility that some satellite forces would go over wholesale to our side in a future war must weigh heavily in military councils in Moscow. Whatever the free world can do to exploit this possibility and to expose what may be the Achilles' heel of Soviet military power should not be lightly put aside. The Soviet insistence on forced repatriation may be taken as an indication of the importance of the issue to our opponents.

This analysis has not dwelt on the moral and humanitarian considerations which fully support the principle of voluntary repatriation. The validity of this principle from an ethical standpoint may be gauged by the general support it has received from the free world. Probably the strongest argument in favor of voluntary repatriation is that based on humanitarian grounds. Because the point seems self-evident it is not further belabored here.

From the foregoing discussion, it appears that there is much to be said for each of the two opposing viewpoints on the prisoner problem. It is believed that the voluntary principle has the most to offer in furtherance of the objectives of the free world—the preservation of its security and the realization of its goals. The writer concludes that the United Nations should steadfastly adhere to its position of voluntary, not forced, repatriation of prisoners of war in Korea.

The position of the international lawyer in this struggle need not be that of the judge, the lawgiver, the seeker for eternal truths. The lawyer is first of all an advocate, with a duty to make the best possible presentation of his client's case. The advocate for the position taken here need not bewail any dearth of material either in international law or precedent with which to buttress his case.

He can point to the legal inapplicability of the 1949 Geneva Convention which has not been ratified by the parties to the Korean conflict. He can point out that the particular circumstances in Korea make this a case of first impression, in which we are observing the humanitarian principles of the Geneva Convention, although it is not formally binding upon us. In the alternative, if the 1949 Convention is applicable, there can be pointed out the latent ambiguity in Article 118, whereby it means repatriation at the point of a bayonet to the Communists, but something entirely different to us.

Further, it can be argued that the point involved in the Korean negotiations at this time is not the interpretation or the implementation of Article 118. That Article does not apply until "after the cessation of active hostilities". What we are seeking is to establish a special agreement concerning prisoners within the framework of the 1929 and 1949 Geneva Conventions, both of which allow such special provisions. The agreement we seek would not adversely affect the situation of prisoners of war nor would it restrict their rights.[14] It would rather preserve completely the right of each prisoner to release and repatriation, while also enlarging his rights by giving him an opportunity not to be repatriated should he so choose.

Neither is there any lack of international precedent for the position of the United Nations regarding Korean prisoners of war. History contains many examples of release of prisoners upon their renunciation of their obligations to the state of origin.[15] In the American Civil War numerous prisoners on both sides were released to join the armies of their captors. The Russians in World War I are reported to have enlisted in the Russian army over 39,000 prisoners of war held by them.[16] And in the Korean conflict, it may be supposed that the over 50,000 prisoners previously mentioned as captured by the North Koreans and then "re-educated" at the front were thereupon enlisted in the Communist forces. Surely these examples represent a greater departure from the idea of forced repatriation than does the United Nations position in the Korean matter, which allows every prisoner an unrestricted opportunity of repatriation. Additional precedents for the voluntary principle may be found in the Russian practice subsequent to World War I. In Mr. Acheson's report to the United Nations of October 24, 1952, he quoted from fifteen treaties signed on behalf of the Soviet Union's Government from 1918 to 1921, all of which followed the principle of voluntary repatriation.[17]

There is nothing new or startling in the procedure whereby a captor detains prisoners of war and does not immediately return them when the fighting ends. This policy may be traced from olden times, when prisoners were held for ransom, down to the Russian procedure after World War II, when thousands were detained under conditions of forced labor. What is novel is the approach of the Geneva Convention of 1949, which for the first time gives the prisoner a right to repatriation immediately after the cessation of hostilities. The United Nations' position in the Korean conflict would sustain this right. But this hardly seems an appropriate time for the strict application of the rather novel principle of forced repatriation, where we have for perhaps the first time a situation where many thousands of prisoners would violently resist return to a despotic state of origin, and where its application would entirely defeat the humanitarian considerations upon which the right to repatriation is based.

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14. Article 6, 1949 Convention.
15. Flory, *op. cit.*, pages 141-147.
16. Kohn and Meyendorff, *The Cost of the War to Russia* (1932), pages 37-38.
17. Department of State Publication 4771, October, 1952, pages 35-39.

The Missouri Valley Regional Meeting

Omaha, Nebraska, April 30 - May 2

■ The Missouri Valley Regional Meeting, held in Omaha on April 30, May 1 and 2, with the States of Kansas, Missouri, Iowa, Nebraska, South Dakota and Wyoming participating, was the largest assembly of lawyers ever held in the area except for the Annual Meeting in Kansas City some years ago. In an area where the lawyer density is not so great as in many others and where the travel distances are longer, a total registration of just under a thousand is outstanding.

Particularly noteworthy, also, was the fact that it was a working meeting, with intense interest in the numerous programs of the Sections as well as in the general sessions and the social events. Beginning with a "Get Acquainted" reception on Wednesday evening, and ending Saturday noon with a large group still in attendance at work-shop sessions, the three days were crowded with so many events that the only complaint was the customary one that people could not be in two places at the same time.

The meeting opened with a general session at which President Storey presided. The general sessions were held in the magnificent and imposing Joslyn Memorial Art Gallery and in an auditorium which, it is ventured, is as beautiful as any in the United States. The Joslyn Memorial, a magnificent structure with an exterior of Indiana limestone and interior of marble, is a notable art gallery of the Midwest, the home of the Omaha Symphony and visiting symphony orchestras and the center of the cultural life of the area.

After an invocation by the Rt. Rev. Howard R. Brinker, Bishop of the Episcopal Diocese, the delegates were welcomed to the meeting by Robert B. Crosby, Nebraska's newly elected Governor (its first practicing-lawyer Governor in fifty years), by President Laurens Williams of the Nebraska State Bar Association, and by President W. W. Wenstrand of the Omaha Bar Association, to whom David F. Maxwell, Chairman of the House of Delegates, responded with a most interesting discussion of the House of Delegates. E. Smythe Gambrell, Chairman of the Regional Meeting Committee of the American Bar Association, gave an enthusiastic discussion of the value of regional meetings to the American Bar Association.

Following these, Roy E. Willy, of Sioux Falls, South Dakota, former Chairman of the House and Chairman of the Building Plans Committee, gave an excellent and detailed description of the new Chicago home of the American Bar Association, the American Bar Center, the models of which were on display in the rotunda, and at the conclusion of his address presented President Robert G. Storey, who delivered one of his always inspiring addresses on the American Bar Association and the American lawyer.

The regional meeting luncheon on Thursday at the Fontenelle Hotel was presided over by William J. Jameson, of Billings, Montana, President-Nominee of the American Bar Association. Frank E. Holman, of Seattle, former President of the Association, was the speaker on the subject, "Increasing Dangers of Treaty Law". Mr. Holman made one of the most effective addresses on this subject, of which he is almost the emblem, that we have ever heard him make, holding his audience without a stir for nearly an hour, and saying that the " 'Internationalists' propose through 'treaty law' to transform the United States from a constitutional republic into a completely socialized form of government", and discussing some of the more than one hundred treaties being drafted in the United Nations, covering every phase of the social, political and economic life of the proposed signatory nations.

While the lawyers were attending this meeting, the ladies were having a luncheon and a style show at the Blackstone Hotel, with many of the famous designers represented, an event which evoked two columns of print beyond the ken of simple lawyers.

Following these affairs, the regional meeting dissolved into Section meetings.

The Mineral Law Section, presided over by Ray S. Fellows, Tulsa, Chairman of the American Bar Association's Section, and by Richard H. Bowerman, New Haven, Connecticut, Chairman of the Junior Bar Conference, was designed to familiarize the general practitioners with some of the problems in a newly producing oil and gas area. Frank J. Scurlock, of Dallas, discussed "Practical and Legal Problems in Delay Rental and Shut-in Royalty Payments". Dudley C. Phillips, Tulsa, discussed "Partial Assignment and Partial Release of Oil and Gas Leasehold Rights", and George Siefkin, of Wichita, Kan-

sas, discussed "General Legal Principles Applicable to Oil and Gas Leases". The Section meeting was well attended by a group particularly interested because of recent oil developments in Nebraska and the Dakotas.

The meeting of the Section of Real Property, Probate and Trust Law was presided over by Thomas S. Edmonds, of Chicago, in the absence of Earl S. MacNeil of New York, the Chairman. Austin Fleming, of Chicago, discussed the drafting of wills, including joint tenancy, and contributed some pithy comment on many recent popular magazine articles on estate planning and the hazards they provoke. This was followed by a short skit on "The Drafting of a Farsighted Will for the Shortsighted Owner of an Unincorporated Business", under the direction of Edwin Cassem, of Omaha, with four young Omaha lawyers as participants, and this in turn was followed by "Information Please on Estate Matters", a question-and-answer period participated in by Laurens Williams, Rush Limbaugh, Austin Fleming, Robert K. Adams, Thomas S. Edmonds and T. M. Ingersoll.

At the same time, the Section of Administrative Law was holding a discussion on the provocative question, "Can the Main Street Lawyer Win a Case Before a Federal Administrative Agency?", by "Main Street" lawyers John B. Gage, of Kansas City, F. Trowbridge vom Baur, of Chicago, and Wendell Berge, of Washington, D. C.

Meanwhile, the American Law Student Association was holding its Eighth Circuit Conference at the Creighton University Law School, where the students were welcomed by Dean James A. Doyle. Two panel discussions were held by the students.

Buses were waiting at 5:30, and everybody adjourned to the Omaha Livestock Exchange Building for a reception, given by the Omaha Bar Association, and for a dinner of roast beef and the trimmings at the world's largest cattle market. The top of the Livestock Exchange, overlooking the mammoth Omaha stockyards, is equipped with two large dining rooms, and the reception, attended by some 750 people, was a beautiful and outstanding event, bringing much praise to its sponsors in Omaha.

Speeches were barred, but following the dinner, President Storey made a few remarks, and George L. DeLacy, of Omaha, had the crowd in a hilarious mood, with his profound contribution to historical research, saying that after Lot's wife had been turned into a pillar of salt, he thought the "steers came along and licked her up".

May Day began with a breakfast conference of bar association officers, with Albert E. Jenner, of Chicago, President of the Conference of Bar Association Presidents, presiding, that dissolved itself into Sections on Insurance Law, Taxation and the Junior Bar Conference.

The Junior Bar Conference dealt with that most important subject to the young lawyer, treatment of clients, fees, law office management and records. The panel discussion was directed by five active practitioners, W. W. Wenstrand, of Omaha, H. Glenn Kinsley, Sheridan, Wyoming, Frederick M. Deutsch, Norfolk, Nebraska, Robert A. Reeder of Troy, Kansas, and John Morrison, of Kansas City. After luncheon with the Barristers Club of Omaha, the Junior Bar Conference, along with the American Law Student Association, continued its discussions. In addition to Chairman Bowerman of the Conference, Donald P. Lay, of the Omaha Barristers Club, and Patrick Kelly, President of the American Law Student Association, spoke.

The Insurance Section, with Ralph Kastner, American Bar Association Section Chairman, presiding, spent the forenoon discussing "The Excessive Verdict Trend—How Shall We Combat It?", with Gordon R. Close, of Chicago, George L. DeLacy, of Omaha, Wiley Mayne, of Sioux City, and Paul Ahlers, of Des Moines, leading the discussion. (In the afternoon the trial section was discussing how to get verdicts that are "more adequate"!)

Thomas N. Tarleau, Section Chairman, presided over the meeting of the Section on Taxation, where Joseph S. Platt, Columbus, Ohio, discussed "What the General Practitioner Should Know About the Taxation of Real Estate Transactions", and Allan H. W. Higgins, of Boston, discussed "What the General Practitioner Should Know About the Federal Tax Consequences of Divorce and Separation, Alimony, Property Settlements, and Support Awards".

After the lunch, the Section meeting continued with an extensive panel discussion on "Income Tax Planning for John and Mary Doe", a skit in five scenes with the lawyers and the clients discussing John and Mary's visit to their lawyers, the examination of their tax problems, the working of their plan, its presentation to the clients and "why the fees". The Section gathering was very well attended and the thanks of everyone extended to the actors, Frank B. Appleman, of Fort Worth, Marvin K. Collie, of Houston, Flavel A. Wright, of Lincoln, Margaret Fischer, of Omaha, as well as to Robert B. Throckmorton, Des Moines, Melvin T. Woods, Sioux Falls, Roy C. Hormberg, Kansas City, Robert McClure, Topeka, Edwin Magagna, Rock Springs, Wyoming, and Laurens Williams, Omaha, who participated in a panel discussion.

The luncheon Friday was unique, as an attempt to acquaint the large audience, many of whom were not members, with the workings of the American Bar Association. David F. Maxwell presided. The Chairman of each of the Sections of the American Bar was given five minutes in which to outline to the group the scope of activities and the nature of the work of his Section. It was voted a very informative program for the American Bar, and constituted a comprehensive survey of most of the activities of the American Bar Association, which are seldom included in one program.

During the day all the ladies and such lawyers as were interested made an extensive tour of Boys Town, that

fabulous "City of Little Men", founded by Father E. J. Flanagan and famous throughout the world by reason of the motion picture *Boys Town,* now built to an enormous plant with innumerable modern buildings partially from the proceeds of that famous picture. After a luncheon in the boys' dining room, the party returned to a tea and tour of the Joslyn Memorial Art Gallery.

After the luncheon, with Joseph W. Henderson, of Philadelphia, past President of the American Bar Association, presiding, was presented the Minnesota "Institute on Civil Jury Trials" by the famous team consisting of Judge Gustavus A. Loevinger of St. Paul, the trial judge, Clifford W. Gardner, St. Paul, President of the Minnesota Bar Association, for the plaintiff, and Sidney P. Gislason, New Ulm, Minnesota, former District Judge, for the defendant.

This demonstration and discussion of trial techniques covered every phase of the trial of civil cases, with a discussion of all the problems, interspersed with the humor and salty remarks for which this panel are so well known in many states in the Middle West. The greatest tribute that can be paid to them is that in a second session of their program on a rainy Saturday morning, they continued until well after the noon hour with three hundred lawyers still giving them rapt attention.

During the afternoon the Special Committee of the American Bar Association on Legal Services to the Armed Forces held a conference under the leadership of Chairman Owen Cunningham of Des Moines, in which the National Legal Aid Association, and the Army, Navy Air Force and Coast Guard participated.

On Friday evening the last of the general sessions was held in the Joslyn Memorial Auditorium, with the Honorable Campbell McLaurin, Chief Justice of the Supreme Court of Alberta, Calgary, Canada, and Robert G. Simmons, Chief Justice of the Supreme Court of Nebraska, as the speakers. Judge McLaurin spoke of the similarity and the differences of our neighboring legal systems, and among other things declared that in his opinion, "the jury system in this country and elsewhere is breaking down because of public apathy". Citing the decline of the jury system in England, where it was first developed, he pointed out that it arose as a "bulwark against star chambers and crown tyranny, but those days are gone". He pointed out that in 1950 there were only thirty-nine civil jury trials held in all of England, and that even in criminal cases in the Province of Alberta, the defendant may waive a jury if he wishes.

Chief Justice Simmons discussed "Law and Lawyers of the Far East". He has had the unique experience of being invited, during the last year, to visit eleven countries in Asia, including India, Malaya, Indonesia, Thailand, Burma, Japan, Formosa and the Philippines. "The striking thing is not in the differences between our systems, but in the similarity, and their lawyers and judges would quickly adjust themselves among us were they to come here." The maintenance of judicial independence, the securing of competent judges and the delays incident to judicial administration are problems common to us all. Judge Simmons gave a brief outline of the judicial systems of each of the countries, their character and their problems.

The meeting is greatly indebted for its success to Clarence A. Davis, General Chairman, and George H. Turner, Director of the Meeting and in charge of all arrangements and details, who were largely responsible for its success. Credit is also due to the numerous committees whose large personnel it is impractical to list, the Omaha Bar Association, and especially the Ladies Entertainment Committee, consisting of Mrs. Barton H. Kuhns, Mrs. Jackson B. Chase, Mrs. Raymond M. Crossman, Sr., Mrs. George L. DeLacy and Miss Ruth Loving, all of Omaha.

Announcement of 1953 Award of Merit Competition

■ The 1953 Awards of Merit will be made to the state and local bar associations reporting the most outstanding activities, other than administrative or routine, initiated or reaching full development since September 1, 1952.

July 20, 1953, is the *final date* for filing entries. Application forms may be secured at the Headquarters of the American Bar Association, 1140 North Dearborn Street, Chicago 10, Illinois.

National Conference Group

Shows Successful Co-operative Results

by **Edwin M. Otterbourg** • of the New York Bar (New York City)

■ In September, 1941, the National Conference Group formed by the American Bar Association and The American Bankers Association-Trust Division, formulated a Statement of Policies which is printed not only in our Association's Annual Report but also in Martindale-Hubbell for 1952, Volume II, page 98A.

The true basis upon which all of these declarations rest was set forth in the following foreword of a Statement issued by the Conference on September 10, 1947, at Cleveland, Ohio, prior to the 70th Annual Meeting of this Association:

> Attorneys and corporate fiduciaries have a recognized common interest in serving the public. This interest is best promoted by the establishment of friendly relationships between the two groups and by the avoidance of controversies and misunderstandings.

On February 11, 1953, the National Conference met at the Waldorf-Astoria Hotel in the City of New York, contemporaneously with the Mid-Winter Trust Conference at which most of the corporate fiduciaries in the United States were in attendance. The Conference received a report of great progress in corporate fiduciary advertising, emphasizing the need of lawyers' service in the matter of wills and estate planning.

From over 400 trust institutions, the Conference has received examples of advertising, emphasizing such need in newspaper ads, folders, booklets, monthly bulletins, letters, television scripts, postage meter slogans, billboard displays, radio announcements, blotters, lobby posters, street car and elevator cards, etc. Even on

neon signs and on deposit slips and in letters of transmittal of dividend checks by trust departments, emphasis, in one form or another, was placed upon the slogan: "HAVE YOUR LAWYER DRAW YOUR WILL".

Realizing that in every community the good will and co-operation of lawyers and good relations between them and corporate fiduciaries are essential, the trust companies are actually now engaged in friendly competition with one another in emphasizing the importance of the lawyers in their field. The picture accompanying this article, we suggest, is one of many striking examples of this. Were our AMERICAN BAR ASSOCIATION JOURNAL an illustrated picture magazine, it could be supplied with hundreds of equally striking items.

Trust companies throughout the country are whole-heartedly co-operating in this educational campaign. This is in marked contrast to the situation which obtained before our National Conference was formed and when in many places the tendency was largely towards emphasizing that the services of lawyers were hardly needed.

Successful, co-operative results of this kind are far more valuable to the public and to the profession than are litigations and quarrels in a field where important public service can be rendered by both groups. The Conference, over the years, has through hearings and discussions, succeeded in obviating and solving questions which might otherwise have resulted in litigations.

Whenever complaints are received from lawyers about corporate fiduciaries, or from corporate fiduciaries about lawyers, the Conference immediately interests itself therein. When a fellow banker tells his confreres that a certain practice is bad public relations, he is apt to be more readily listened to than when a committee of lawyers makes a complaint; when a committee of lawyers tells a brother lawyer that his practices are

(Continued on page 607)

Limitations Imposed on Televison and Radio:

A Problem That Needs Immediate Attention

by Max K. Lerner • of the New York Bar (New York City)

■ Mr. Lerner's article points out facets of the problem of a public trial which should come to the attention of the legal profession. He argues that our desire for judicial decorum is not an issue in the question of the broadcasting of court and legislative proceedings—declaring that televising the proceedings of the United Nations has not in any way interfered with the decorum of that body.

■ Several months ago, I had an opportunity of attending a farewell dinner tendered in honor of a friend who had recently completed a fine record of service in the New York District Attorney's office. During the course of the evening, a very prominent criminal trial lawyer was called upon to say a few words and he recounted some of his rich early experiences, stressing the importance of investigation.

Years ago this attorney was retained in a homicide case. After interrogating his client, the attorney visited the hospital where the victim had died. During the course of the trial, the district attorney stated emphatically that the guilt of the defendant would be proved beyond all reasonable doubt. He put on the witness stand a man who swore that the victim stated ". . . that he knew he was going to die and had no hope of recovery", and last but not least, ". . . the defendant hit him over the head with a blunt instrument". It seemed a clear-cut case of homicide coupled with all the earmarks of a perfect dying declaration until the defense attorney introduced the hospital records into evidence and proved that the cause of the victim's death was lockjaw.

Television, as a news and special events medium, has been attacked indiscriminately by legislators, lawyers, judges and laymen. It is presently being suffocated without having the opportunity of proving itself.[1] It has been choked before it has had a chance to breathe. The following legislation, resolutions and edicts are indicative.

The Helman Bill[2] recently passed by the New York legislature, signed by Governor Dewey and taking effect immediately, establishes an additional section to the Civil Rights Law, namely, Section 52, which provides that:

> No person, firm, association or corporation shall televise, broadcast, take motion pictures or arrange for the televising, broadcasting, or taking of motion pictures within this state of proceedings, in which the testimony of witnesses by subpoena or other compulsory process is or may be taken, conducted by a court, commission, committee, administrative agency or other tribunal in this state. Any violation of this section shall be a misdemeanor.

The constitutionality of this bill will be discussed in later paragraphs. Georgia and Wisconsin have also passed legislation prohibiting the broadcasting media from covering court and legislative sessions.

Following the report of its Committee on Civil Rights,[3] on January 25, 1952, the New York State Bar Association adopted the following resolutions in connection with radio and television broadcasting and other media:

> No photographs, moving pictures, television, or radio broadcasting of Congressional or executive hearings should be permitted while any witness is testifying, except at public hearings on pending legislation.
>
> Where hearings are conducted on pending legislation, the necessary apparatus for photographs, moving pictures, television, and radio broadcasting should be as inconspicuous as possible.
>
> No radio broadcasts or telecasts of Congressional or executive hearings should be commercially sponsored.

That the New York State Bar As-

1. Address by Jim Borman, President of the National Association Radio News and Directors. These developments, "constitute a serious transgression of the people's rights to know what their government and their courts are doing." Radio-Television Daily, Page 1 (April 21, 1952 issue).

2. Signed by Governor Thomas E. Dewey of New York, March 27, 1952.

3. Report of Committee on Civil Rights, New York State Bar Association, Pages 8, 9, 10, 11, 77th Annual Meeting held in New York City.

sociation urges that all Congressional and executive hearings should be governed by a code of procedure embodying the rules set forth in the above resolution.

That the New York State Bar Association condemns the practice of broadcasting, telecasting, or photographing judicial trials and urges, in the interests of justice, the prohibition by statute of this practice.

Also, resolutions dealing primarily with establishing a uniform code to govern the conduct of legislative committees of the Senate and House of Representatives were passed.

The House of Delegates of the American Bar Association passed a resolution recommending a ban on the broadcasting and telecasting of court trials and legislative committee hearings. On February 25, 1952, Speaker Rayburn of the United States Congress, refused to allow the House Un-American Activities Committee to televise any of its hearings, and in addition thereto banned the televising of all future congressional hearings.[4] Speaker Martin has lifted the television ban in the House.

In May, 1952, Senator McCarran introduced a resolution (S. Res. 319) to ban radio and television covering Senate committee sessions. No action, however, was taken on that resolution.

Television Does Not Require Bright Lights or Loud Noises

Even at the risk of repetition, it is important at present to clear up once and for all certain misconceptions in regard to television. Witnesses at hearings have complained of blinding lights, grindings, whirrings and other allied noises. These disturbances are in the main brought about by newsreel cameras which require klieg lights and, of course, flash bulbs. It is interesting to note that television does not require any of these lights.[5] It does not need illumination any brighter than that ordinarily provided for a public meeting room. In fact, it is important to point out at this time that television cameras need not be in the same room as the speaker. The televising of the United Nations hearings from Lake Success and the signing of the Japanese Peace Treaty in San Francisco were televised from other rooms. It can be argued that television is the least obtrusive instrument in the coverage of any hearings or trials. Television has been put in the spotlight, but it can be put in the background.

Questions have been raised as to why hearings or trials of any sort should be brought into the home. It should be noted that it is not the intention to argue the point where all media are barred for some good reason. However, where other media are allowed, television should not be the scapegoat. Moreover, a medium should not be erased or prohibited simply because it reaches a vast seeing audience. Suffice it to say that newspapers and other media have been reporting events for a good number of years. Prior to the advent of television, a cry was heard from certain quarters about the need for factual reporting. More particularly it was charged that the press was unfair and biased. What better medium is there than television which actually places the listener on the spot and in the same room? The television medium is matchless, an electronic miracle produced in our era of life. You can see events when they happen, and with all the comforts of home.

It is also argued that television will impede progress in getting at the truth. Barring a specific medium is not the solution for seeking out truth. In fact it is incumbent on the Congress and the courts to establish a set of rules covering hearings and trials which is applicable in all instances. This will clear the confusion of differing interpretations already rendered by various courts and committees. Recently, United States District Judge Schweinhaut, of Washington, D. C., discharged two defendants from a contempt action when they refused to answer any questions put to them during a crime investigation hearing (Kefauver). However, in *United States* v. *Moran*, the United States Court of Appeals for the Second Circuit upheld a conviction of perjury. The Court said ". . . nor was the hearing so lacking in decorum because of microphones, television cameras and photographers that it cannot be regarded as 'a competent tribunal' ".

A clear delineation of policy in connection with representation and appearance of counsel before legislative hearings is also necessary.[6] Important to note at this point is the unalterable fact that every objection raised in connection with television and radio is applicable to the free press, but it would be incredible to advocate that the freedom of the press would or should in any way be eliminated, suppressed or even curtailed.

As was pointed out in earlier paragraphs, bar associations have definitely gone on record in favor of barring television and radio. However, it is noteworthy to point out that on January 15, 1952, The Association of the Bar of the City of New York refused to pass the following resolution by a vote of 66 to 42:[7]

> RESOLVED, that The Association of the Bar of the City of New York recommends to Congress of the United States the adoption of a Resolution, concurrent or otherwise, prohibiting the broadcasting, by radio or television, of the proceedings at a public hearing held by a congressional investigating committee at which witnesses testify involuntarily under the compulsion of a congressional subpoena, and prohibiting the taking of motion pictures or other photographs during the course of such hearing.

The minority report of the Committee on the Bill of Rights which opposed the resolution stated:

> We do not agree with the majority report. We believe that televising public Congressional hearings is in the public interest.
>
> The grounds upon which objection

4. Statement, daily newspapers. February 26, 1925.

5. Broadcasting Telecasting Magazine, April 2, 1951, Page 56.

6. Report of Committee on Civil Rights, N. Y. State, Pages 11-13.

7. The Association of the Bar of the City of New York's Committee on the Bill of Rights, "Report on Radio and Television Broadcasting on Hearings of Congressional Investigating Committees". Presented to the Stated meeting of the Association, January 15, 1952. (December 27, 1951). The majority report consisted of thirteen signatures, while the minority report consisted of three.

is made to televising public Congressional hearings rest upon a misconception of the functions of a legislative body. It has been contended by some who oppose television that the sole function of a Congressional investigation is strictly limited to ascertaining facts upon which to legislate. But this argument proves too much. If this argument were sound it would mean that all Congressional investigations should necessarily be conducted in executive session, the public barred and strict secrecy as to the identity and testimony of witnesses maintained.

A curb on the Congressional function which would result in secrecy attending the investigations of Congressional committees would be a first step to totalitarianism. In fact, the Constitution expressly provides that each House shall keep a journal of its proceedings and publish the same except as such parts may require secrecy. . . .

For that reason, it appears to us as novel that lawyers whose traditional function is zealously to protect civil rights should now favor any imposition of that curtain of secrecy behind which denial of civil rights best flourishes. Totalitarians of both right and left have always shown their reluctance to come before the people and to disclose their acts in the searching light of public view. The principle of full disclosure should hardly be opposed by persons who base their position on protection of civil rights. Civil rights can best be maintained by focusing the honest searchlight of public opinion and publicity upon those who would do away with our fundamental concept of representative government and the values of a truly national system of suffrage. . . .

The modern television camera can operate successfully in the normal amount of light present in the hearing room. Bright lights which have been associated with crowded Congressional hearing rooms are tools of the newsreel photographer; the popping of flash light bulbs actually impedes television and is a requirement of the press photographer, not of the new electronic medium. Modern television cameras are completely noiseless. In fact, the ultra sensitive image orthicon tube now in universal use for television cameras has been likened to the proverbial cat's eye and can easily pick up the feeble light of a single paper match.

The presence of a television camera and microphones in a hearing room can be arranged in such way that there is not the slightest interference with the proceedings in progress nor even awareness by the participants in the proceedings that they are being televised. . . .

We do not agree with the majority view that the public should be barred from participating to a full extent in legislative discussions and hearings, when such participation is for the first time in our history made possible by the miracle of a new electronic art.

The comparatively new and challenging questions are those which arise out of the broadcasting coverage of both criminal and civil trials. So long as the courtroom remains open to the public, it is difficult to understand why broadcasting should in any way be objectionable. Perhaps now is the time to re-examine Canon 35 of the Canons of Judicial Ethics as adopted by the American Bar Association.[8] In discussing the coverage of trials, one must separate criminal from civil actions.

A criminal case actually televised in the United States was the case of *Minnesota* v. *Rubin Shetsky,* tried at the City of Glencoe, McLeod County, Minnesota. The case was tried before Judge Moriarity, of Shakopee, in the Eighth Judicial District. There the court permitted the setting up and use within the courtroom of a television camera, and the trial was later televised from a twin city station and used in a national hookup. In the case of *Minnesota* v. *Laura Miller,* the same judge presided and permitted radio broadcasting.[9] Judge Moriarity stated:

> This is a people's court and the people have a right to know what is going on and how it is conducted. It is true and fundamental that all the people cannot assemble in the court room to be present when cases are tried. Yet all the people have a right to do that. That is why we have in every court room in the United States of America a place for the people to come into the courtroom and to sit down and observe what is transpiring. That rule is just as sacred and recognized in the Supreme Court of the United States as it is here in this town. So that for the benefit of those who are not present when cases are tried, the very essence of democracy requires that the information which is produced in the course of the trial and the way and manner in which a trial is conducted, and the proceedings of the trial, should be reported to the people.

Subsequent to these trials, the Minnesota State Bar published various conclusions after certain findings of fact:[10]

1. That both trials were characterized by spectacularity and sensationalism in their conduct by the court.
2. That both trials were characterized by occurrences in the court room, more particularly described in the Findings of Fact above, tending to detract from the essential dignity of the court and likely to create misconceptions with respect thereto in the mind of the public, and to undermine public confidence in our courts.
3. The committee further finds that while the courts of the state had not adopted the Canons of Judicial Ethics of the American Bar Association prior to the trial of said cases, the courts of the State had long recognized and followed the provisions of these Canons of Judicial Ethics as a guide to judicial conduct in our district courts, and at the June, 1950 meeting of the Minnesota State District Judges Association the said Canons of Judicial Ethics were formally adopted. (See Note A, Canons of Judicial Ethics, adopted by the American Bar Asso-

Concerning the Author: Max K. Lerner is a member of The Association of the Bar of the City of New York, also Chairman of the Radio and Television Committee of the Federal Bar Association of New York, New Jersey and Connecticut. He is a member of the Copyright Law Revision Committee of the American Bar Association.

8. Canons of Judicial Ethics:
Canon 35. Improper Publicizing of Court Proceedings.
Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recesses between sessions, and the broadcasting of court proceedings are calculated to detract from the essential dignity of the proceedings, degrade the court and create misconceptions with respect thereto in the mind of the public and should not be permitted.
Adopted September 30, 1937.

9. "These cases referred to in Minnesota were tried in the district court, which is a trial court, and not a supreme court; hence, no citations are available. There is a citation to the original Shetsky case which is 49 N.W. 2d 337, 229 Minn., page 566." Letter received by the writer from Bert A. McKasy Executive Secretary, Minnesota State Bar Association.

10. Report of Committee to Board of Governors, Minnesota State Bar Association, January, 1951, entitled "Report of Findings and Recommendations of the Special Committee on Criminal Trial and Procedure of the Minnesota State Bar Association."

ciation (1948 edition) and interpretations attached hereto and made a part of the addenda.)

4. The provisions of the Constitution guaranteeing freedom of speech and of the press and equal justice for all have resulted in conflicting views between the press and the judiciary regarding their respective rights. That these conflicting views have resulted from a failure on the part of each to recognize that the press and the judiciary are mutually interdependent—the press must have an uncoerced judiciary to maintain freedom of the press—the judiciary requires an uncensored press to maintain an uncoerced judiciary. There has never been any well defined standard setting out the reciprocal rights, duties and responsibilities of the Courts, the Bar, the Press and the Radio relating to each other. We believe that a full and open discussion of the relationship of press, radio and television, to our courts and the adoption of specific standards with reference thereto would work for the mutual interest and benefit of all concerned, and would serve to avoid any differences of opinion relating to the same in the future.

It also recommended among other recommendations:

> For the purpose of protecting the public interest in our courts and the right of litigants and witnesses therein, we further recommend that a committee be appointed consisting of representatives of the Judiciary including the United States District Court; the Supreme Court, District Courts and Municipal Courts of this State, the Bar Association, the press, radio and television to determine and define the reciprocal rights, duties and responsibilities of each in the trial of actions of our courts, both civil and criminal, and formulate standards of decorum with reference thereto.

It is important to point out that the aforementioned recommendation was to clarify and formulate standards of decorum in the field of the relationship of news media to the courts and not to bar by legislation or by edict.

No one will argue and there is no doubt that where a man's liberty is at stake, the dignity of the courtroom and the protection of the accused are supreme considerations. However, to say that it is public entertainment is presupposing a fact which is altogether unproved. Let the people observe the trial and let them hear and see democracy in action. While it is true that some people view trials with a curious appetite, it does not logically follow that the entire population are mere curiosity seekers. It is time that more than a so-called handful of people knew the machinations of our judicial process. As far as the defendant's being alarmed is concerned, anyone who has had trial experience knows that after the first few questions are under way, everyone, including the defendant, becomes absorbed in what is going on and everything else is momentarily forgotten.

Advantages of Broadcasting Trials Have Not Come to Fore

There are very serious advantages to broadcasting a trial which, it is believed, have not as yet come to the fore. Television and radio instead of being discouraged should be considered as additional media in the defendant's favor. They may encourage the appearance of witnesses, draw more people for jury service and further guarantee the freedom of the accused. Lawyers who have represented defendants in criminal actions will take cognizance of the fact that sometimes it is very difficult to ascertain the whereabouts of an important witness. Perhaps, too, an eyewitness to the crime may come forth of his own volition after he is aware of the circumstances. This aspect would be a great help to a defendant being tried for a serious crime. Most lawyers trying criminal cases have virtually prayed for a witness to come forth who perhaps would shed some light. More important, when the accused is penniless—and most are—and when investigations are required, it sometimes is difficult to perform the task. The Criminal Courts Branch of the New York City Legal Aid Society in 1951, handled a total of 16,685 cases. In Part I of the Court of General Sessions, where defendants are arraigned for pleading, the Society received 83.8 per cent of all assignments made by the court in cases where the defendant lacked financial means to employ counsel.[11] Perhaps therefore with the greater publicizing of a case, there is the possibility and further guarantee that truth will prevail.

A New York case[12] recently decided and which received some publicity depicted an individual prisoner who felt that he was wrongfully sentenced as a second offender. The prisoner petitioned the court for a writ of error *coram nobis* and the Court of Appeals held that: "In the circumstances disclosed by the record before us, it is petitioner's right to be present at a hearing in open court upon the merits of his application for a Writ of Error Coram Nobis, and to have the aid of counsel at such hearing, if he is so advised (*People* v. *McLaughlin*, 291 N.Y. 480, 482-483; *Johnson* v. *Zerbst*, 304 U.S. 458, 462-468)." After this adjudication by the Court of Appeals, the prisoner reappeared before the Court of General Sessions and it was found that he was wrongfully sentenced. He was resentenced and is now a free man. It seems that if a hearing such as this were televised, it would make an indelible impression as to how the rights of the accused or sentenced prisoner are protected jealously by the courts. If there are helpful media, why restrict them?

Another important assurance, it is believed, is found in the fact that radio and television coverage would not be partial but complete. The completeness and variance of coverage is a matter for the courts to decide, just as they set their procedural rules relative to their own tribunals. However, to bar television at the outset without establishing any of the aforesaid rules is hasty and, in the long run, detrimental.

Civil cases, it seems to me, should be broadcast, and perhaps the selection should be left to the broadcaster, the respective bar associations and the judiciary, who might select the cases with the idea of presenting a series of different types of legal actions. The selection must be done

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11. Seventy-sixth Annual Report of The Legal Aid Society, 1951, Page 10.
12. *New York* v. *Langan*, 303 N.Y. 474.

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Signed Articles
As one object of the *American Bar Association Journal* is to afford a forum for the free expression of members of the Bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of the *Journal* assume no responsibility for the opinions or facts in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

■ *The Vanishing Litigant*

Here, in America, we are so accustomed to reading of increases in population and expansions in our cities, factories and public utilities that we take it for granted that growth is the order of the day. It never enters our minds that recession rather than growth may actually be manifesting itself in an important phase of our American life. Least of all, do we, the members of the legal profession, expect tidings that a wizening process is going on in an activity which has always been the outstanding feature of the practice of the law.

Those who have surmised that all activities in America are expanding and who encountered recent issues of the *Fordham Law Review* and the *Oregon Law Review*, which show that for more than a quarter century litigation has been declining in volume, must have been dismayed. Both articles, through review of court records, show that the volume of appeals is materially less today than it was thirty years ago. One of the articles, by resort to data which are segregated into the categories of law, equity, crime and divorce, shows that since the biennium, 1927-1928, there have not been filed in the *nisi prius* courts of Oregon as many law, equity and criminal cases as were filed in that biennium. In fact, the article shows that although since 1927-1928 the state has added 600,000 to its population—600,000 potential litigants—the figures for 1927-1928 remain the high-water mark.

Clearly, the litigant's interest in our courts is waning. In fact, he appears to be vanishing.

It is by no means inevitable that adjudication of controversies by adversary action before a tribunal over which a judge presides is here to stay. Our present method of determining the outcome of issues is of comparatively recent origin. For centuries people got along without it. Seeking the judgment of the Supreme Being, the early Anglo-Saxon employed first one and then another of such methods as trial by battle, trial by the ordeals, trial by torture and trial by compurgators. Today we think it atypic that our forebears tolerated such barbarous methods. Possibly future generations may be appalled by what we tolerate. Less than six months ago a group of insurance companies published in New York newspapers an advertisement which is significant. It said: "Personal injury cases today are subject to a delay of three or more years before coming to trial in New York City", and offered all claimants against the companies prompt arbitration. That advertisement shows that toleration is reaching its end and may afford an explanation for the waning volume of litigation. Who can say that 200 years hence men will not wonder why the present generation tolerated the methods which we employ? Even we cannot justify, but, to the contrary, condemn, the heart-rending delay which a seeker of justice must endure in many jurisdictions. Likewise, we are perturbed when we observe with increasing frequency trials that grind on in our *nisi prius* courts for six months and even longer. And who can say that posterity will not be astonished when it reads that some judges of our time held cases under advisement for three years and even more?

Very likely the litigant is not vanishing. Manifestly, people get involved in controversies as frequently as ever before. Is it not possible that the would-be litigant has found a forum in which he can get a decision more promptly at less expense and with greater certainty than in the courts? It may be that it is the present method of judicial trial, or at least its employment in some categories of controversy, which is beginning to vanish.

Editorial From a Member of Our ADVISORY BOARD

■ *Public Relations*

Throughout the ages of history the legal profession has never been a popular one. In too many places there exists in the public mind a prejudice against the lawyer. There is a lack of understanding by the public of the problems of the lawyer. We as lawyers understand,

though the public does not, that to a large extent the work of a lawyer is that of a partisan who is an advocate of one party to a dispute. It is human nature for one adverse party to hold grievances against the other. The lawyer's life is one of strife and conflict on behalf of others, and in this respect differs materially from other professions and vocations. From this perfectly natural situation there frequently arise misunderstanding and criticism.

The Committee on Public Relations is accomplishing a great work in removing from the press, the radio and the screen, unjust and improper criticisms of the legal profession; but this work cannot be done by this Committee alone. The individual lawyer must play his part. Each member of the profession owes a duty to contribute toward better public relations. Some lawyers confine themselves exclusively to office, home and private diversions. Such a lawyer lives in a little world all his own and comes in contact only with his personal friends, his immediate clients and his associates in golf and fishing. Businessmen and other public spirited citizens of every community devote freely of their time and effort to promote general civic and public enterprises with no thought of financial reward. Too many of our profession have neglected to participate in the promotion of those things which are for the general benefit of their communities. The lawyer can build a spirit of public confidence by participation with the other citizens of his community in public affairs and manifest an interest and a willingness to devote a reasonable part of his time to its general welfare. It is submitted that if the profession will extend itself in this regard it will do much to remove from the public mind the sometimes present prejudices which exist in the minds of people who do not know lawyers.

HERBERT G. NILLES

Fargo, North Dakota

Committee on Criminal Justice Appointed by President Storey

■ A nation-wide effort to improve the administration of criminal justice in the United States was set in motion by the American Bar Association with the appointment of Justice Robert H. Jackson of the United States Supreme Court as Chairman of a Special Committee to direct the undertaking.

The membership of this important Committee is given on the President's Page, in this issue.

In announcing the appointments, President Storey also disclosed that assembling basic facts in connection with the criminal law study will be the number one research project of the new American Bar Center now being financed and scheduled to be constructed in Chicago starting this summer. The Bar Center is being built by the American Bar Foundation, a nonprofit corporation formed to sponsor research in long-range objectives of the organized Bar for the benefit of the public and the legal profession. In addition, the American Bar Center will be a clearing house for legal research in the United States.

The authority to undertake the broad criminal justice study was granted in February by the House of Delegates. The seven-member committee was charged by the House of Delegates with responsibility to recommend (a) new minimum standards of procedure and administration of criminal laws and (b) means to put into effect such of the standards as are later approved by the House of Delegates.

President Storey said "I believe this distinguished committee is destined to make a report which will have a profound impact upon criminal justice in America. I trust that the Bar generally may find and welcome an opportunity to participate in its constructive efforts. It is contemplated that this investigation will be the broadest and most thorough ever undertaken into the adequacy of our system of criminal justice.

"The study will not be concerned with the social and psychological causes of crime. It will begin with the existence of crime and ascertain the facts relating to the actual administration of justice. I know of no more appropriate project as the initial research effort of the American Bar Foundation's new Research Center. The American Bar Center is dedicated to the public good, and

Robert H. Jackson

it is fitting that its first attention should be devoted to the neglected field of criminal law in all its phases, and in which every American citizen has such a vital stake.

"The lawyer is concerned with the cause of crime as a good citizen, but his professional responsibility is with the administration of criminal justice. As a profession dedicated to public service, it is a regrettable but undeniable fact that we have not

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with the co-operation and aid of the bar associations. Recently The Association of the Bar of the City of New York and the American Broadcasting Company, presented a public affairs program entitled "On Trial". This was indeed a step in the right direction. In any event, rather than serving in a negative fashion, bar associations should take the initiative in co-operating with the broadcaster. The public relations committees of the various bar associations have in recent years tried to present the role of the lawyer and judge on a more factual and informative basis. In an article published in the AMERICAN BAR ASSOCIATION JOURNAL,[13] George Maurice Morris points out the importance of public relations in present day legal practice. It seems to be logical that the broadcaster, bar associations and judiciary, were they to co-operate in connection with the presentation of civil trials, would then actually inspire higher regard in the public for our courts. In this connection, the role of the broadcaster would be merely to transmit, but the responsibility to explain would rest with the bar associations and the judiciary.

Ban of Broadcasts Raises Constitutional Questions

The constitutional questions as regards prohibiting television and radio as news media have in the past been relegated to the background.[14] However, with the advent of negative state legislation and congressional edicts, the legal questions arising as to the constitutionality of any of the aforementioned boldly advance to the foreground. The constitutional history of undue burdens on interstate commerce, freedom of speech and the state police power furnishes the researcher with abundant material. The long line of cases leads to the recent case of *DuMont* v. *Carroll*[15], and the law seems clear that the federal and state governments are expressly prohibited from passing legislation or formulating edicts adversely affecting television and radio.

For the purpose of clarity, let us first approach the problem statewise.

The power of Congress to regulate commerce is derived from the United States Constitution, Article I, Section 8.[16] Radio broadcasting has been held to be interstate commerce.[17] Pursuant to that power, Congress has enacted several statutes dealing with radio communication beginning with the Wireless Ship Act of June 24, 1910, and culminating in the Communications Act Amendments of 1952.[18] The declared purpose of the Communications Act was to establish a comprehensive regulatory system over all forms of communication by wire and radio. Section 301 particularizes this general purpose with respect to radio:

> It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of interstate and foreign radio transmission; and to provide for the use of such channels, but not the ownership thereof, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions and periods of the license.

The administration of the Act was entrusted to the Federal Communications Commission, which was charged with licensing and regulatory powers.[19]

It is important to recognize the fact that the responsibility for the selection and presentation of proper program material is vested in the individual station licensees. The Commission, pursuant to Section 326 of the Communications Act, is specifically denied the power to censor radio communications of any kind. The prior rulings of the Supreme Court indicate that the same rules as applied to radio in connection with broadcasting would be applicable to television.[20]

There can be no doubt that the scheme of federal regulation established by the Communications Act is so pervasive and comprehensive as to preclude state regulatory action of any kind. In the words of Mr. Justice Hughes in the *Minnesota Rate Cases*, 230 U.S. 352, 399:

> It has repeatedly been declared by this Court that as to those subjects which required a general system or uniformity of regulation, the power of Congress is exclusive. In other matters, admitting of diversity of treatment according to the special requirements of local conditions, the states may act within their respective jurisdictions until Congress sees fit to act; and, when Congress does act, the exercise of its authority overrides all conflicting state legislation. [Section 303, 47 U.S.C. 303.]

Another point to consider is that the transmission of a television program is accomplished partly by broadcasting and partly by the use of coaxial cables supplied by the American Telephone and Telegraph Company. The transmission of intelligence and information across state lines by telephone and telegraph, wireless telegraph, radio or mail constitutes interstate commerce.[21] Moreover, the courts will also look beyond the form of a state statute which appears to burden interstate commerce and examine its necessary practical operation and effect.[22]

It seems that in a field clearly preempted by Congress, a state would have no jurisdiction except for the appropriate exercise of its police power. A state may exercise its police power in order to protect the health, morals and general welfare. Howev-

13. February, 1952, issue.

14. Page 9, Committee on the Bill of Rights, The Association of the Bar of the City of New York (1951).

15. *DuMont* v. *Carroll* 86 F. Supp. 813 (E.D. Pa. 1949), aff'd, 184 F. 2d 153 (3d Cir. 195), cert. denied 340 U.S. 929 (1951). In this connection, see Article, "Motion Picture Censorship —The Memphis Blues," 36 *Cornell Law Quarterly* 296 (Winter, 1951).

16. Art. 1, Sec. 8, Cl. 3, U.S. Constitution: ". . . regulate commerce with foreign nations and among the several states."

17. *Federal Radio Commission* v. *Nelson Brothers Bond and Mortgage Co.*, 289 U.S. 266; 53 S. Ct. 627; 77 L. ed. 1166; *Technical Radio Laboratory* v. *Federal Radio Commission*, 36 F. 2d 111; *General Electric Co.* v. *Federal Radio Commission*, 31 F. 2d 630.

18. Chapter 879—Public Law 554, 1952.

19. Philip Bergson, "State Censorship of Television", 10 *Federal Bar Journal* 156-160 (April, 1949).

20. *Fisher's Blend Station* v. *Tax Commissioner*, 297 U.S. 650 (1935) at page 655 "By its very nature broadcasting transcends state lines and is national in its scope and aims—characteristics which bring it within the purpose and protection and subject to the controls of the Commerce Clause." See also, *DuMont* v. *Carroll*, *supra*.

21. *Western Union Telegraph Co.* v. *Kansas*, 216 U.S. 1.

22. *Lacost* v. *Department*, 263 U.S. 545; *Hennefford* v. *Silas*, 300 U.S. 577.

er, police power is generally executed after the commission of an act and not in advance of a situation. The Helman Act bars appearance prior to any actual experience by the State of New York.

While the state cannot censor television and the Federal Communications Commission is specifically prohibited from doing so, the remedy for improper programing would seem to be for the Federal Communications Commission to fail to renew a license where there has been a clear breach.

On January 26, 1951, the Attorney General of the State of New York ruled in response to a request for an opinion by the State Education Department that the "provisions of the Education Law which now regulate motion pictures do not apply to television".

> Your letter of January 8 asks my opinion upon certain questions relative to review and licensing of television in theaters. Such presentations are being made commercially in motion picture theaters, using the same screen used for motion pictures. This form of commercial entertainment may expand rapidly, and it will present problems similar to those now controlled by motion picture licensing. The subjects of television can be as varied as those of motion pictures, although television has special adaptability for presenting current events.
>
> Origination and transmission of television programs employs facilities closely related to radio, and thus is within a field where Federal regulation is, for all practical purposes, supreme and exclusive. It has been held that the Pennsylvania Board of Censors cannot censor motion picture film to be projected for television reaching Pennsylvania homes. *Allen B. DuMont Laboratories v. Carroll*, 86 F. Supp. 813 (Oct. 26, 1949), aff'd 184 F. 2nd 153 (3 Cir., Sept. 5, 1950). That decision may be reviewed in the Supreme Court of the United States (application for certiorari was filed Dec. 4, 1950), but for present purposes it is assumed that it is law.
>
> On the other hand, commercial showing of television in motion picture theaters involves the same problems of public taste and morals which have justified regulation of motion pictures by state and municipal authority, and uses facilities substantially the same as far as audience presentation is concerned. Production and distribution of motion picture film is interstate commerce, but the constitutionality of state regulation of commercial presentation to audiences is well established. . . .
>
> In my opinion there is no constitutional barrier to a statutory requirement that no commercial presentation of television may be made at a place of amusement within the State unless the program is licensed in a manner similar to motion picture licensing.
>
> Education Law PP 120-132, which now regulate motion pictures, do not apply to television. Whatever additional regulation is deemed necessary must be provided by the Legislature.

It would seem that the Helman Act in principle is contrary to the underlying basis for the opinion of the Attorney General.

It is also interesting to raise the collateral points and questions as to what effect, if any, the Helman Act would have on a congressional hearing being held in any of the United States District Courthouses in the State of New York. In addition, does the section violate the Fourteenth Amendment and Article 1, Secs. 6 and 8 of the New York State Constitution?

Let us now approach the problem from the federal angle. In *DuMont v. Carroll*[23] an action was brought for declaratory judgment by five corporations owned by or affiliated with national television networks and operating federally licensed TV stations in Pennsylvania. The court was asked to determine the validity of a regulation promulgated by the Pennsylvania State Board of Censors. Chief Judge Kirkpatrick in writing the opinion said:

> . . . More specifically, when Congress, in Section 326 of the Communications Act of 1934, 47 U.S.C.A. 326, denied the Federal Communications Commission the power of censorship, did it in so doing manifest the intent to leave the states free to censor programs, or does this Section, taken in connection with the scope and purpose of the Act, amount to a prohibition of all censorship, both by its own agency and by any other authority national or state?
>
> I am satisfied that in the field of television there has been a plenary exercise by Congress of the power to regulate and a complete occupation of the field, including censorship.

In addition, the court adopted the following conclusions of law:

> 15. Television, like newspapers and radio, is included in the press whose freedom is guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.
>
> 16. The chief purpose of the guaranteed liberty of the press is to prevent previous restraints upon publication and in the case of radio and television previous restraints upon broadcasting.
>
> 17. The television program, as it has been developing, is an organ of public opinion.

Thus it can be argued, that since television falls within the pattern of the free press, any restriction of this medium which discriminates against it in favor of other media is unconstitutional and contrary to public interest.

The more one examines the problem from all angles, the more one realizes the fact that prohibitory legislation or edicts do not necessarily produce a solution. In view of the importance of the subject, it would seem proper that in connection with court coverage a special committee consisting of members of the American Bar Association, news media, broadcasters, and members of National Association of Radio and Television Broadcasters meet, study and investigate in order to promulgate a desirable set of standards. It was unfortunate that just such a committee formed subsequent to the Hauptmann trial failed to arrive at a happy accord.[24] In connection with legislative hearings, whether Federal or state, rules equally protecting and governing all individuals and media should be promulgated.

The importance of the problem deserves immediate consideration.

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23. Wherein it was held that a regulation of the Pennsylvania State Board of Censor was invalid because (1) it infringed upon a field of interstate commerce which Congress had preempted and was inconsistent with the statute and with the national policy adopted by Congress for the regulation and control of radio and television and (2) because it would constitute an undue and unreasonable burden on interstate commerce in television broadcasting.

24. "Trial by Impartial Jury Shall Be Inviolate", Address delivered to radio editors, University of Minnesota, February 9, 1952 by Victor H. Johnson, Chairman of the Committee on Court Decorum.

Codes and the Rain of Law:

The Search for Better and Fewer Laws

by Ben W. Palmer • of the Minnesota Bar (Minneapolis)

■ Mr. Palmer's article treats of man's search, perhaps as old as the first legislature, for simpler, shorter laws. From Polybius and Demosthenes to our own times, men have longed for codification of the law, and every lawyer respects the names of Justinian and Napoleon who lent their names to codes of law that have endured for longer than the empires they ruled.

■ As a lawyer friend of mine struggled with statutes and decisions as his contribution towards the new Commercial Code, I thought of that Miltonic figure who did

> Tempt with wandering feet
> The dark, unbottomed, infinite abyss,
> And through the palpable obscure
> find out his uncouth way.

And though my friend is not uncouth, "chaos heard his voice" and did "retire, as from her outmost works, a broken foe". And, peering over my friend's shoulder as he worked, I saw Rousseau, and Draco, Justinian, Cromwell and Napoleon.

For men have always dreamed of a golden age, a chief attraction of which has been fewer laws and simpler ones. Rousseau began his world-shaking book, "Man, born free, is everywhere in chains". More, writing of his Utopia in 1516, said its people "have but few laws . . . . They very much condemn other nations, where laws, together with the commentaries on them, swell up to so many volumes; for they think it an unreasonable thing to oblige men to obey a body of laws that are both of such a bulk and so dark as not to be read and understood by every one of the subjects."

So too, few laws were one of the attractions in Campanella's *City of the Sun,* published in 1600. And in 1605 when the excitment in England about Virginia was at its height, Ben Jonson, in *Eastward Ho!* capped the climax of his description of bounteous nature and eternal summer in that idyllic land with the words, "We should have no more law than conscience and not too much of either."

Said Tacitus, "when the state is most corrupt, then laws are multiplied". Gibbon gave as one of the causes for the "Decline and Fall Off the Roman Empire", as Mr. Wegg would put it, "the multiplicity of laws". Bacon wrote: "So great is the accumulation of the statutes, so often do the statutes cross each other, and so intricate are they, that the certainty of the law is entirely lost in the heap."

"New laws", said Burke, "were made to expound the old; and new difficulties arose upon the new laws; as words multiplied, opportunities for cavilling upon them multiplied also. Then recourse was had to notes, comments, glosses, responsa prudentum, learned readings: eagle stood against eagle; authority was set up against authority. . . . Some adopted the comment, others stuck to the text. The confusion increased; the mist thickened. . . . In this uncertainty (uncertain even to the professors, an Egyptian darkness to the rest of mankind) . . . our inheritances are become a prize for disputation; and disputes and litigations are become an inheritance."

About a century ago, Hallam criticized the English law in words that sound strangely modern. "We accumulate statute upon statute and precedent upon precedent until no industry can acquire nor any intellect digest the mass of learning that grows upon the panting student, and our jurisprudence seems not unlikely to be simplified in the worst and least honourable manner—a tacit agreement of ignorance among the professors".

About the same time as Hallam, a writer in *Household Words* said of the "members of the legislature of this happy country", whom he called "The High Priests of the Mysteries", "Their persevering ingenuity . . . in burying all simple facts designed for the public guidance beneath a dense medley of verbiage, tautology, reiteration and verbal mysticism that

puts the legal acumen of the most consumate rogue to a severe test to disentangle one single thread of any practical utility from the mass; their constant passing of Acts to amend Acts of which nobody (same themselves and the Queen's printer) has been aware of the existence; their incessant passing of other Acts to repeal other Acts still, under it requires the most gimlet-eyed clairvoyance to discover which are Acts in force and which are not—these kindnesses place them in the first rank of our (the rogues') benefactors."

And in 1791, when Kent came to the Bar of New York, there was scarcely a volume of its reports where now there are hundreds and few were the state and federal statutes; he lamented the multiplicity of law books as "an evil that has become intolerable". If the industry and scholarship of Kent were disheartened and the capacious intellect of Bacon appalled at a trickle of law that has now become a torrent—an engulfing flood—what of the average practitioner of today?

We know that cursing is not enough. We will not say with Timon of Athens, "Thou cold sciatica cripple our senators. that their limbs may halt." We will not put a rope around the neck of every law-proposer to be drawn tight if it fail to pass as the ancient Locrians did according to Polybius and Demosthenes. For we recognize the many causes for our present multiplicity of laws; the natural growth of the common law; the complexities of our federal system and the large number of independent law-making bodies from city councils to Congress; the right of each American legislator to introduce an unlimited number of bills without party or cabinet control; the passage of special legislation in the guise of general and of all sorts of laws represented as for the common good by efficiently organized lobbies for special interest groups; the abandonment of ironclad theories that that government is best which governs least, that government, like dress, is the badge of lost innocence. Substituted for these has come a day-to-day pragmatic policy of judging each measure from the standpoint of its expediency or presumed social value. While some would call this escape from the thralldom of epithets or the tyranny of absolutes, others would say this was an abandonment of principle.

There was also the abandonment of laissez faire and the general acceptance of an engineering concept of law and of legislation as a means of shaping society nearer to the heart's desire, if not of shattering it to bits. Adam Smith has gone and, along with him, Spencer's application of the Darwinian theory to society. Even Huxley saw that those who survived the struggle for existence are not necessarily the highest types; their survival, the survival of the competing business man, for example, did not prove that the surviving type was the best from an ethical point of view or for the best interest of society as a whole in the long view of things. And so by legislation —pure food laws, unfair trade practice acts and regulations—rules of the game were to be established and enforced. No longer was the economic world to be a jungle: nature red in tooth and claw.

There was the humanitarian movement of the nineteenth century. There was the dominant idea of progress and of the infinite perfectibility of man; law was one of the means of progress and of perfectibility, puritanical or through legislation as educative to new ethical standards. When a buoyant belief in progress—partly the inheritance of the frontier, partly part of the intellectual climate of the Western World—was shattered by wars and the Great Depression, law was seized upon as the means of recovery from catastrophe. And if the voice of the people was the voice of God, legislators were not unwilling to admit that they were the authentic voice. The legislative sense of omniscience and of omnicompetence might not lead to bills repealing or amending the laws of supply and demand and of diminishing returns or Gresham's law or to make π an even number. But perhaps some legislators thought that the Greeks were correct in their belief that lawmakers were inspired by divine power, blown into like the poet, Lycurgus by Apollo, Minos by Zeus. Perhaps Demosthenes was right when he said, "Every law is an invention and gift of the gods." And so with the youthful Wordsworth were the French revolutionary legislators right who, as Lowell said, thought that "the laws of the universe would curtsey to the resolves of the National Convention"? Or, as they said when they tumbled the head of Lavoisier into a basket from the guillotine, "The Republic has no need of chemists." Were not lawmakers sufficient?

Urban Shift Was Greatest Cause for Increase in Law-Making

But obviously the greatest cause of increased law was not legislative perversity or conceit. It was the urban shift; the change in the character of our civilization from one predominantly small-town or rural, from one of the wide-open spaces to a complex, closely integrated, swiftly moving civilization of great metropolitan areas. In one hundred and thirty years the population of the United States increased twenty-seven times, but that of cities of eight thousand or more increased three hundred fifty-two times, that is thirteen times faster than the population. It needs no ghost from the grave to point out the difference between practicing on a saxophone or trumpet in a forty-acre field or in a two-by-four city apartment with papier maché partitions.

Cursing is not the remedy, nor legislative devices such as those preventing passage of bills after a certain time (for clocks may be effectively covered), or the tacking of nongermane amendments on a popular bill. We think this is a modern trick, but it is suspected that it was originated by Saturninus, a Roman tribune of 104 B.C. Not long afterwards the first almost vain attempt was made to stop this. For the *Lex*

(Continued on page 610)

Should Justice Go to College?

The Role of the Humanities in Education

by Sol M. Linowitz • of the New York Bar (Rochester)

■ Mr. Linowitz sets forth on these pages a proposal that should be of especial interest to the legal profession which is deeply aware of the importance of the humanitarian values that underlie our system of law.

■ A short time ago, America's most distinguished living jurist made a deeply significant address dealing with a vital phase of American education. Speaking to the Board of Regents of the University of the State of New York, Judge Learned Hand discussed the role of the humanities in developing sound political judgment. His thesis was that the study of the humanities is essential to the education of the citizen in a democratic society; that many of our basic concepts—such as freedom of speech, of press, of religion—are not merely jural, but fundamental canons which can be properly understood only in the historical perspective of man's long battle for liberty in different times and in many places; and that therefore the real meaning of constitutional guarantees can be truly grasped only if men first know the roots of freedom and the relevance of yesterday's struggles. These things, Judge Hand believes, can be found in the study of the humanities—the history, the art, the literature, the philosophy, the music of the past.

What I want to do here is but add a footnote to what Judge Hand has so eloquently said, by pointing up one aspect of the problem.

The teaching of the humanities in our colleges and universities today does indeed offer a long look at what has been said, thought, written in the civilizations of the past and an opportunity to see the workings of different societies in perspective. From the first rise of democracy in 500 B.C. —to its fitful rebirth in the twelfth and thirteenth centuries among the Italian city states—to its emergence in the Swiss cantons—then in its more modern shapes in the Puritan Revolution, and later in the nineteenth century—we can through the humanities trace the growth of the young idea called democracy which, in the words of Pericles, found its greatness in trusting "less in system and policy than to the native spirit of our citizens".

But to know that our roots are deep does not necessarily mean that we also know them to be good. Because the medieval concept of the college and university had its central base in religious doctrine, an integral part of its teaching was the prescription of what was good and what was evil. Our modern colleges and universities, however, while retaining many of the symbols and the sancta of the medieval form, have rejected the religious basis and thereby the frank dogma of right and wrong. Now I am not suggesting that this is not entirely in keeping with the purest freedom to pursue truth; what I am saying is that it has left a vacuum which needs filling in some fashion and which in these times appears to need it badly. There is at hand, I suggest, a positive and powerful set of principles which may have real value for this purpose.

I should like to see every college and university add to its curriculum a required undergraduate course in "Principles of Anglo-Saxon Justice". The object of the course would be to present to every student attending our colleges and universities the fundamental principles of our legal and judicial system and to suggest the tone and the climate of our legal rules of fair play. I would try to give our college students a "feel" for the meaning of basic rights, for the right way and the wrong way of judging evidence, of sifting truth from untruth, of measuring liability or guilt, of making up one's mind. Such a course could with broad strokes trace the need for law in society and the forces and rules which have shaped and nourished our legal system. It could try to impart a true under-

standing of those things which are the flesh and bones of our pattern of justice—freedom of speech, of religion, of press; the right to be secure in our homes against unreasonable searches and seizures; the right to a jury trial in all criminal prosecutions; the right to counsel; the right of habeas corpus; the guarantees against double jeopardy, self-incrimination, *ex post facto* laws, and bills of attainder; and the right to due process of law. I recognize, of course, that most of our college curricula today do offer certain courses in government, political science, history and ethics where the interested student may, if he chooses, learn of some of these things. My suggestion is, however, for something quite different—for an organized, systematized, co-ordinated presentation in one course designed for all who come to college. In short, I believe there is a place—a vital place—in our structure of liberal education today for exposure of all students to time-tested principles of justice so that as many as possible may understand how rights are granted or acquired, how justice is administered and what makes law and order secure in a republic. This is a project which colleges and universities should be able to undertake with the assistance of our bar associations on behalf of a great common cause.

For it is not enough that lawyers may know when a man is, for example, being deprived of his right to a fair hearing or being stripped of his constitutional guarantees without due process. What is at stake here belongs to all citizens, and all citizens —particularly those who come seek- some understanding of what they ing higher education—have a right to will lose if they remain silent. It is not enough that a great judge may raise his voice to warn that a "community is already in the process of dissolution where each man begins to eye his neighbor as a possible enemy". The danger, if it exists, is a danger to all Americans, and our colleges and universities owe an obligation to make clear that legal rights of the individual, such as presumptions of innocence and integrity, are basic sources of our strength.

These are times when all men are being challenged to examine and weigh with restraint, with moderation and with wisdom. As citizens of a democracy, we are required to accept responsibility for making decisions and determining values. If, as Plato has said, the essence of education is learning to like the right things, then at least those we seek to educate in our higher institutions of learning should have a clear sense of the ground rules by which we live and by which we sort and choose in this kind of society—an understanding of how to evaluate objectively, how to consider soberly, and how to decide fairly. Yet these things are the very heart of the law. For if the law

Sol M. Linowitz

does not teach the need for judging with cool nerves, a clear eye and an open mind, then it teaches nothing else. And in a proposal such as is here made the law can, I respectfully suggest, help liberal education achieve its real and ultimate purpose described in these words of William James:

> What the colleges—teaching humanities by examples which may be special, but which must be typical and pregnant—should at least try to give us is a general sense of what, under various disguises, superiority has always signified and may still signify. The feeling for a good human job anywhere, the admiration of the really admirable, the disesteem of what is cheap and trashy and impermanent—this is what we call the critical sense, the sense for ideal values. It is the better part of what men know as wisdom.

Democracy as a form of government is subject to a perpetual challenge, not from foreign enemies alone, but from foes in its own household. Liberty demands a close and unremitting guardianship. The leaders of a democracy must be prepared to do battle with false causes which profess to fight under the democratic banner. They must be prepared to speak the truth unflinchingly to their peoples, and shun that shallow sentiment and confidence in loud formulas which is their special temptation. They must be ready to make decisions far more difficult than any which can confront an oligarchy or a tyrant. They must be willing for the sake of true liberty to wage war upon license. America faced the ordeal, and because she faced it manfully and clearsightedly she emerged triumphant. It is an ordeal with which at any time the world may be again confronted. If it should be our fate to meet anew that fiery trial, may God send us the same clearness of vision and stalwartness of purpose.

—*Two Ordeals of Democracy*,
John Buchan, Lord Tweedsmuir.

The American Law Institute:

Thirtieth Annual Meeting

by Minturn T. Wright III

■The American Law Institute convened its 30th Annual Meeting in Washington, D. C., on May 20. The four-day convention was attended by upwards of 600 of the Institute's 1200 members from all parts of the country. They participated in a number of discussions of Institute projects, both old and new. While no important decisions were made this year along the lines of giving final approval to any draft, the Institute considered for the first time the initial work of its reporters on a proposed Model Penal Code, and announced the beginning of a project to be known as the "Restatement Continued".

The better part of the third and fourth days was devoted to reports by Professors Herbert Wechsler of Columbia University and Louis B. Schwartz of the University of Pennsylvania on the Penal Code. Tentative Draft No. 1 was submitted to the Institute for discussion. The draft includes two articles only, one entitled "General Principles of Liability" and one on property crimes. The general liability provisions include a number of definitions of terms such as "act", "behavior", "purpose", and "cause". Some of these were criticized in discussion. It was felt by some members that an initial section defining terms is not helpful if the definitions are to be very broad, and may even make trouble for courts endeavoring to apply them. The view of the reporters is that no harm will come from these broad definitions since it is their intention to make plain in each section of the code dealing with particular crimes the exact sense in which words such as "purpose" and "cause" are employed. One interesting development appears from the definitions: the reporters have eliminated entirely the word "intent" and substituted "purpose", which they define as "a conscious aim or object of behavior".

In another section of the Tentative Draft criminal liability in general is condensed into six subheadings. The reporters have done away with the distinction between principal and accessory and treat equally liability from self-action and liability from activity as an accomplice to the activity of another. On this point the Institute voted to delete present Section 2.04 (3)(b), which defines complicity to include aiding the commission of a crime by another even though there is no preconcert or common purpose with the other or even knowledge by the other that he is being aided. It was agreed that liability on such grounds would best be specifically provided for in particular situations.

The draft draws together in one crime entitled "Theft" many existing property crimes such as larceny, extortion, embezzlement, cheating and obtaining money by false pretenses. *Theft* is defined as the appropriation of another's property without his effective consent, "unless the actor (a) is unaware that he is appropriating property of another, or (b) believes that he has effective consent to the appropriation or that he is otherwise privileged to appropriate".

The Penal Code is of course in its early stages. It was officially begun only last year after a generous grant from the Rockefeller Foundation. Its importance lies in the scope of the planned endeavor, already apparent from the reports and discussions at the annual meeting. It is not to be a collection of existing cases or a restatement of the law of crimes, but an attempt to create a coherent and cohesive system of American criminal justice. The reporters announced that they intend to re-examine controversial facets of existing law such as the felony-murder rule. The code will cover treatment problems as well; the reporters are being advised by a committee which includes criminologists, sociologists, penologists and psychiatrists.

The Institute also discussed at the meeting Tentative Draft No. 8 of its Federal Income, Estate and Gift Tax Statute. The gift tax provisions were the first fruits of the recent expansion of the Institute's tax project into the area of gift and estate taxation. Reporters Stanley S. Surrey of Harvard and William C. Warren of Columbia submitted for consideration by the members provisions defining gift, transfer and consideration; provisions for charitable and marital deductions and political con-

tributions; gifts to and by corporations, and so on.

Like the Institute's Income Tax Statute, also discussed at the meeting, the gift tax provisions do not deal with rates, exemptions and other essentially political problems. The attempt is once again to iron out technical difficulties, problems of administration, and conflicts. The current exploration into the gift and estate tax area will make possible a harmonious and uniform treatment of the interrelations of all three tax areas.

Work on the income tax provisions has now covered a number of years and there is still work to be done. But progress is steady, as the drafts considered at the meeting indicate.

The Institute was gratified to receive President Harrison Tweed's announcement of a $500,000 grant from the A. W. Mellon Educational and Charitable Trust of Pittsburgh. The fund is earmarked for a program of continuous revision of the Institute's Restatement of the Law, a project to be called the Restatement Continued. Nine years have elapsed since the completion of the twenty-two-volume Restatement, and the Mellon grant makes possible the vital job of bringing it up to date.

The first proposed revisions were discussed at the annual meeting. Professors Warren A. Seavey of Harvard, Willis L. M. Reese of Columbia, and Austin W. Scott of Harvard submitted proposed revisions of parts of the Restatements of Agency, Conflict of Laws and Trusts respectively.

The annual meeting was opened by George Wharton Pepper, Chairman of The Council. The Institute was addressed by Justice William O. Douglas, who commended to The Institute a searching inquiry into the problems of procedural due process in America.

The Institute's Director, Judge Herbert F. Goodrich, reported on its accomplishments of the past year and its plans for the future. The need to embark on the Restatement Continued, he said, has become the more pressing with the increasing reliance on the Restatement by the courts. Total citations of the Restatements numbered 21,935 as of April 1, 1953. Judge Goodrich noted the increasing interest of many groups in the tax project and prepared the membership for discussion of the Model Penal Code. He also announced approval by the Council of the report of a group, headed by Professor Robert Bowie of Harvard, which had made a study of the feasibility of the Institute's undertaking work in the field of antitrust law.

John E. Mulder, Director of Continuing Legal Education, reported that his Committee had reached its fifth birthday. During the past five years the Committee has participated in 278 institutes in 121 communities in thirty-eight states. Total attendance, he said, probably exceeds 25,000. A principal endeavor of the past year has been a survey of the entire field of continuing legal education and a tabulation of all projects by all groups in every state. The results show a definite development in educational facilities in small communities, particularly in the West.

In the field of literature the Committee is completing its Series III set of practical handbooks and already is planning a Series IV. Series I and II have sold over 68,000 copies, one book on estate planning by Harrison Tweed and William Parsons having already exceeded the 10,000 mark.

Judge Joseph C. Hutcheson, Jr., reported for the Committee on Membership. The Institute also received Earl G. Harrison's Report of the Treasurer.

Senator Pepper presided at the Annual Dinner on May 22. Attorney General Herbert Brownell gave the principal address, informing the Institute on the present state of the Justice Department and the program he is endeavoring to put into effect. He announced forthcoming implementation and use of the Federal Youth Corrections Act, a statute passed by Congress in 1950 and based on The American Law Institute's Model Youth Correction Authority Act. The Attorney General reported his support of proposals to increase the number of federal judgeships and raise judicial salaries. He told also of plans to increase the efficiency and responsibility of federal district attorneys.

Before the evening ended the Institute was treated to a concert which included Judge Learned Hand's recent recording of two folk songs, and several renditions by Judge Augustus Hand in person.

One of the high points of the annual meeting was a Continuing Legal Education panel discussion on May 21 of the problems surrounding investigations of communist activity. The symposium was entitled "Constitution—Conscience—Communism—Advice at the Practical Level". The Institute members and their guests heard three addresses by Harold M. Keele, of Chicago, Abe Fortas, of Washington, D. C., and Bruce Bromley, of New York. John Lord O'Brian, of Washington, D. C., performed the job of Moderator.

Mr. Keele traced the history of congressional investigations, told of his own experiences as counsel for the Senate Committee investigating communism in foundations, and outlined his proposals for procedural safeguards in the conduct of such investigations. Mr. Fortas supported the view that recent investigations have exceeded the bounds of decency and propriety and set forth his own proposals for needed changes. Mr. Bromley replied that the inquiry into communism was not only proper but necessary, and cited his own experience under the Feinberg law of New York.

The officers of The Institute were re-elected for another term. They are Harrison Tweed, of New York, President; William A. Schnader, of Philadelphia, First Vice President; John G. Buchanan, of Pittsburgh, Second Vice President; Earl G. Harrison, of Philadelphia, Treasurer; and Herbert F. Goodrich, of Philadelphia, Secretary and Director.

Copies of drafts discussed at the meeting may be ordered from the office of The American Law Institute, 133 South 36th Street, Philadelphia 4, Pennsylvania.

Books for Lawyers

THE SPIRIT OF JEWISH LAW. *George Horowitz. New York: Central Book Company. 1953. $12.50. Pages xl, 812.*

This is a big book—and a meaty one. It could have accurately been titled *An Encyclopedia of Jewish Law*. Yet, the title used is a good one, reflecting the author's understandable desire to paramount that persistent and pervasive spirit of humanity which has brooded over Hebrew law for three thousand years. Every student of primitive law has been impressed by the fact that, with the appearance of the Mosaic laws, a novel, idealistic tone of mercy-tempered justice became evident in legal history. Such Old Testament laws as the requirement that a day-laborer be paid—or a pledgor's cloak be returned—before sundown, and the prohibition of the muzzling of an ox who treads out the grain, reveal a strikingly humane spirit. Though academic preoccupation with the Talmud has often revealed involved dialectics and hair-splitting casuistry among the rabbis, these Hebrew scholars have nurtured that humane spirit. As a result, the Talmud today is still marked by such idealistic provisions as the prohibition of witnessing a usurious document, of turning one's head from a beggar, or of frowning when one gives alms.

There have been available, heretofore, multivolumed works on Hebrew law *(e.g.,* Rabbi Kadushin's *Jewish Code of Jurisprudence)*, and slender volumes on selected topics *(e.g.,* Goldin, *Hebrew Criminal Law* and Amram, *The Jewish Law of Divorce)*, but this book provides the first comprehensive, one-volume reference covering the entire field of Hebrew law. Mr. Horowitz, with a law degree from Columbia and a quarter-century of experience at the New York Bar, has long been a student of the Talmud, which contains the body of Jewish law as built up through centuries by the rabbinical interpretation of the Old Testament laws of Moses. His work "unlocks" much material not previously accessible to American lawyers, either because it was in Hebrew or was hidden in hard-to-find rabbinical commentaries under headings having no meaning to most lawyers. The novelty of the author's effort—and, probably, its greatest service to the profession—lies in the patient skill with which he has digested the writings of the ancient Hebrew scholars and arranged this comment under appropriate common-law headings, thus making it readily available. An eighteen-page, double-column index is detailed enough to make it an excellent reference work. An extended bibliographical note makes the volume a good beginning point for one planning an exhaustive study in the field. Of a number of useful appendix features, two of the most helpful are a table, by book and verse, of all Old Testament references in the volume, keyed to the text; and an excellent glossary of Hebrew and Aramaic terms in Hebrew law.

Such a comprehensive and informative book as this presents a real challenge to the reviewer. Actually, its real worth can only be revealed by examination, even careful study. It opens to a hundred-page history of the growth of the Talmud, touching briefly, in chronological sequence, the more outstanding rabbis and their contributions to the subject. Then, following general chapters on the humanity of the Talmud, the Jewish material is discussed under the traditional Anglo-American legal topics, such as penal law; marriage, divorce and the family; classification and acquisition of property; inheritance, wills and trusts; contracts; suretyship; bailment; torts; and procedure, including judges, their jurisdiction and judgments. As the modern lawyer examining specific topics compares our law with the Hebrew material, he will note not only many striking similarities and differences, but will glimpse some interesting sidelights on legal history. For example, he will be impressed with the "seven laws of the sons of Noah" (which were held to be binding on "all" men) as one of the earliest statements of the "natural law"; he will be shocked, perhaps, at the discrimination which allowed usury to be charged a Gentile but not a Jew and tort damages to be collected of a Gentile cattle-owner, but not by a Gentile from a Jewish owner; and he will be interested in the fact that the rabbis developed a class of torts, somewhat in the nature of an easement-in-reverse, called "harms to land", including such injuries as smoke, odors, withdrawal of support, etc. The rationale of the Hebrew law of bailments, and the distinctions between real and personal property, are so accurate for our law that some will wonder to what extent our own system may be indebted to the Jews, an indebtedness which is made explicit in the field of mortgages.

Throughout the book the reader will encounter shrewd techniques and devices developed by the rabbis to check rigors of a too-literal interpretation of Mosaic law and to adjust the law to the changed conditions of Jewish life. One example of this is the use of the marriage bond *(ketubah)* to force the husband to contract away his otherwise unlimited rights to divorce and polygamy; another is an interpretation of the rule against self-incrimination so strict that it practically abolished the blood-taint of illegitimacy; still another is the group of fictions, exceptions and evasions whereby they released Jews from the Mosaic prohibition of the charging of interest; and, finally, the rabbinical creation

of a unique crime—and tort—"informing against a Jew", in an effort to alleviate the oppression which this race often faced. This astute awareness of reality is revealed, at times, in flashes worthy of the best in wisdom-literature; for example, R. Judah, in explaining the father's duty to the son, observed, "A man who does not teach his son a trade, teaches him robbery", and another rabbi's picturesque explanation of the crime of receiving stolen property, "It is not the mouse that steals but the hole".

Not the least value of the book is the clarity given many passages in the Bible by the explanation of the customary law involved. The incident of the "loosening of the shoe" in the story of Ruth emerges with new meaning as the traditional procedure for releasing a right of inheritance to one further removed in kinship; Isaiah's vague direction to King Hezekiah to "command with respect to thy house" takes on meaning as a clear order that he make his will; and the contract of Judah for the safe return of Benjamin to the aged Jacob was a clear case of suretyship, perhaps the first recorded in history. Even the forms and wording of Jewish legal instruments reveal history; the oldest legal practices show clear traces of Babylonian influences, and some of the later subjects to appear (*e.g.*, mortgages on specific items, written wills, and trusts) even employ Greek words, thus tracing their lineage on their faces.

This volume is not a critical estimate of the origin of Hebrew law; such volumes as Meek, *Hebrew Origins*, and Diamond, *Primitive Law*, are already available for such purpose. It was not intended as such. It is a monumental labor of love by a "son of the Torah", and there is not one jot or tittle of criticism implied in the statement that he approached this excellent study of his beloved Talmud in a worthy mood of reverence and respect for a great and ancient legal and religious tradition. His work has more than academic interest to any lawyer. It will be profoundly meaningful to the five million Jews in the United States, among the more orthodox of whom it is still a social affront for one Jew to sue another in any court except a Jewish court administering the rabbinical law of the Talmud. Aside from the obvious value of the work in the study of comparative law, it provides the new State of Israel with a compact, lucid summary of the Jewish law which that State has already declared is to become the foundation of its legal system. Gentile though I am, I read the book with rapt attention; I learned much in the process; and I am proud to add it to my library. What more can a reviewer be expected to say?

DILLARD S. GARDNER
Raleigh, North Carolina

MY UNCLE JOSEPH STALIN, *by Budu Svanidze. New York: G. P. Putnam's Sons. 1953. Pages xviii, 235.*

The translator of this volume begins his preface by saying that "it would be difficult to exaggerate the high importance or the passionate interest of the material contained in this book". Unfortunately the book itself fails to live up to this glowing tribute. On the other hand, it is not entirely lacking in those qualities, more common to fiction than factual narrative, which serve to hold the reader's attention. Probably most of us unconsciously picture the late Joseph Stalin as an ogre lacking only in ungulate and cornuted appendages. This book, on the contrary, reveals him as a genial family man, who would have preferred to spend his time hunting and fishing rather than in keeping Europe in a turmoil. The author, who claims a dual relationship with Stalin (by blood through his mother, whose mother was Stalin's aunt; by marriage through his father, whose sister Stalin married), largely ignores the political implications of his uncle's career, which creates a sort of "Bobbsey Twins in the Kremlin" atmosphere, having the same fascination as one might experience coming home and finding the children playing with a live cobra. The translator has added to this macabre effect by interspersing the narrative with footnotes pointing out the untimely and frequently gruesome demise reached by most of the principal characters. The author himself, who is now living in this country, attributes his continued survival to the fact that he escaped from behind the Iron Curtain as a result of romantic rather than political intrigue. Now that his famous uncle is no more, he may be spared to complete his next book which, his publishers announce, will be called *Stalin Told Me*. However, unless the things which Stalin told him are more sensational than those which he observed for himself, history is not likely to be elucidated nor literature embellished by the result.

WALTER P. ARMSTRONG, JR.
Memphis, Tennessee

ACCOUNTING AND THE LAW. *By James L. Dohr, George C. Thompson and William C. Warren. St. Paul: West Publishing Company. 1952. $10.00. Pages xxxvi, 965*

The concepts on which this book is based have been developed at Columbia University through joint collaboration of the law faculty and the Graduate School of Business over a period of a quarter of a century. In brief they are: (1) a lawyer's education today is incomplete without a basic grasp of the principles of accounting; (2) grasp of these principles and development of ability to communicate with accountants and businessmen do not necessitate developing proficiency in bookkeeping routine; (3) in order to achieve a coherent understanding of accounting, material must be presented as an integrated whole and not broken up or warped to fit into the various categories of the law; (4) the standard commercial course approach to the art of accounting which relates the parts to the artificial framework of the balance sheet is equally unsatisfactory; (5) material presented to a second-year law student must contain sufficient elementary exposition to carry along the tyro and at

the same time present enough rigorous analysis and intellectual challenge to stimulate the student who has had previous accounting and to convince the class as a whole that the accounting course is not, in intellectual stature, a poor relation of the rest of the curriculum. There have been some challenges to these principles (see 39 A.B.A.J. 40, January, 1953); but they seem now to be generally accepted both in academic and practicing circles, so the balance of this review will be confined to an estimate of how well the authors have succeeded in living up to them.

The opening chapters' development of the nature and flow of business capital and the measurement of income form an excellent introduction and, while not beyond the grasp of a diligent student, by no means oversimplify or overmechanize the problem. On the other hand Part II, 127 pages long, which is devoted to techniques of bookkeeping, appears to me to be unnecessarily complicated and too much concerned with form. The examples given are difficult to follow because they are carried out to many-placed odd figures, and there is a profitless multiplicity in the accounts covered. The postponement of treating the journal until the end and then stressing multi-column examples seems far less desirable than bearing down at the outset on the simple double-entry mechanics of recording and classifying financial transactions. Finally the treatment of consolidation techniques at a relatively early stage in the course would seem to impose well-nigh insuperable classroom difficulties. All in all, my estimate is that this section of the book would be a wonderful review for students with previous accounting training but would require almost a full semester to be understood by a novice.

After a brief chapter on the relative spheres of practice of lawyers and accountants, Part IV deals generally with the nature of, and relationship between, the income statement and balance sheet, presenting items such as *Cintas* v. *American Car & Foundry Co.*, 131 N.J. Eq. 419, 25 A. 2d 418 (1942), which seem to be pretty tough morsels for students not yet exposed to basic problems of the measurement of revenue and the matching of costs.

The next part, which gets really to the heart of accounting, is to my mind the most successful part of the book and one for which the authors deserve a great deal of credit. Abandoning the classical approach of dealing with balance sheet items in isolation and then considering income statement items, the editors treat first the flow of short-term capital, then the flow of long-term capital and finally changes in proprietary capital. In this manner the student is given a real opportunity to examine the nature and soundness of accounting postulates. The hundred pages devoted to inventories and cost of sales is also very well handled, though one misses pulling together into one comparative example the various methods of computing costs such as LIFO, FIFO, Base Stock, etc. The authors intertwine the recognition of revenues and the handling of receivables in an ingenious manner but to the detriment of presenting at an early stage a clear concept of the meaning of income, and the chapter which blends temporary investments, deferred charges, repairs and reserves for contingencies seems to me a queer potpourri.

The hundred-odd pages on plants and equipment is again a first-class job. Some might look askance at the way administrative artificialities, such as the original cost concept of utility accounting, are woven into a development of principles of more universal application, but the net effect is very satisfying. Intangibles and funded debt problems are treated briefly but adequately, and the substantial section on capital and retained earnings, including such items as stock dividends and recapitalization, is very fine.

The final sixth of the book treats such heterogeneous matters as cost accounting, the role of auditors, and analysis and interpretation of financial statements. Considering the growing importance of working-capital or flow-of-funds analysis, it is to be regretted that the authors found space for only six pages on this subject and devoted that to a rather specialized aspect of the problem. Special chapters point up the impact of accounting on two of the lawyer's primary functions—drafting instruments and presenting evidence.

As a teacher of accounting or corporation law or as a practising lawyer in any business community, I would want to have a copy of this book available for ready reference. If, as a teacher, I had a full-year course—seventy hours or more—I would consider it a superb case-book, though as indicated above I would make several drastic changes in the order of treatment. But if, as is usually the case in law schools, I was assigned the task of instilling the maximum understanding of accounting into beginning students in the space of thirty or forty classroom hours, I would, with some regret, rule this book out as too ambitious.

ROBERT AMORY, JR.

Professor of Law, Harvard University
(On leave of absence)

The President Receives Members of the Board of Governors

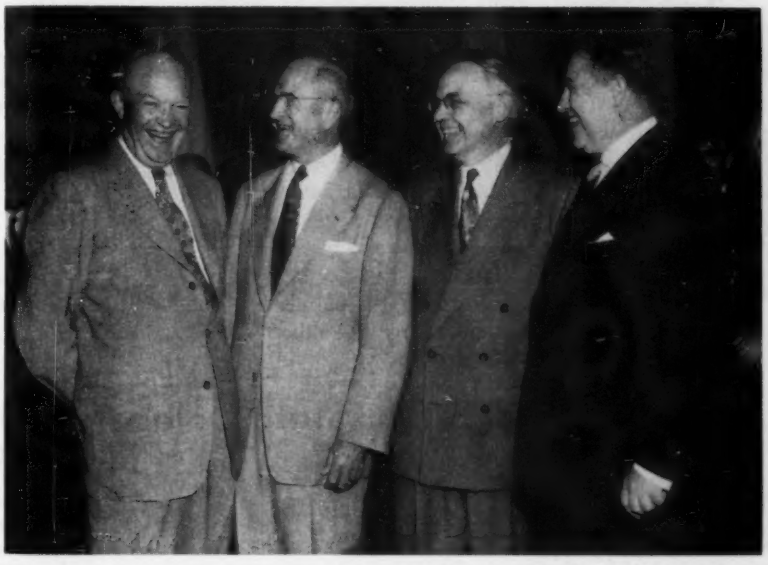
■ The Board of Governors called on President Eisenhower during their Washington meeting in May. The Board informed the President of their support of legislation pending in Congress to increase salaries of federal judges, members of Congress, and United States district attorneys.

The delegation, consisting of 15 members of the Board of Governors and three designated new members, was headed by Robert G. Storey, of Dallas, Texas, President. It included David F. Maxwell, Philadelphia, Chairman of the House of Delegates, and William J. Jameson, Billings, Montana, President-Nominee.

The Board went on record officially as supporting the bill (Senate Bill 1663), introduced by Senator McCarran of Nevada to increase by $10,000 a year the salaries of U. S. judges and members of Congress, and to authorize the Attorney General to raise the salaries of district attorneys, within his discretion, up to $20,000 per year.

The action by the Board of Governors reaffirmed the position previously taken by the House of Delegates in support of the recommendation of the Hoover Commission that congressional and judicial salaries, as well as the salaries of key officials in the executive branch of the Federal Government, be increased in order to attract the best available men. Executive branch salaries were raised in 1949 in line with the Hoover Commission proposal, but legislative and judicial salaries were not.

President Storey said he informed President Eisenhower that the Board of Governors had in effect concurred in the views expressed by the President when he told reporters he believed congressional salaries should be adequate to attract the best available men to public service, whether or not they have independent financial means.



Left to Right—President Eisenhower, Robert G. Storey, President of the American Bar Association; William J. Jameson, President-Nominee, David F. Maxwell, Chairman of the House of Delegates.

"We wanted the President to know, and so informed him", Mr. Storey said, "that the American Bar Association believes the time has come for a realistic approach to the problem of governmental salaries. We think it is actually an economy for the government to pay salaries sufficient to enable the best men to enter and stay in public life. We informed the President that we agreed entirely with the similar views he expressed at his press conference. We believe this position to be entirely consistent with the President's laudable economy objective."

In going on record in support of the McCarran Bill, recommended for passage by the Senate Judiciary Committee last week, the Board of Governors had before it a report showing that the net cost of granting a $10,000 per year increase to Senators and Representatives would be $3,465,000 per year, and that the same increase for federal judges would entail a net cost of $2,240,000, or a total of approximately $5,7000,000. This is after deducting income taxes from the gross cost of such an increase, amounting to approximately $10,000,000. These estimates were made by the American Bar Association's Committee on Judicial Selection, Tenure and Compensation, whose chairman is Morris B. Mitchell, of Minneapolis.

"Even in the face of the necessity

of cutting over-all federal expenses so that the federal budget may be balanced and taxes reduced, the national welfare demands that the recommendation of the Hoover Commission as to federal legislative and judicial salaries should be followed and that Congress should at this session pass a bill to carry out these recommendations," the Committee's report said.

"It is significant that the Hoover Commission deemed it consistent with its main objectives—to effect economies in the operation of the Government—to recommend substantial increases in salaries of the major members of the executive branch, and in the salaries of the members of the legislative and judicial branches.

"With the sharp increase in the cost of living which has occurred since the Hoover Commission report was made in 1949, these long delayed salary increases have become a matter of vital importance now."

As it is now, the Committee said, many members of Congress must take time from their legislative duties to accept paid speaking engagements, employ members of their families as office assistants, or supplement their government salaries in other ways in order to make ends meet. The Committee also found that federal judges actually have lower salaries now, in terms of purchasing power, than in 1939 when their pay was first held subject to federal income taxes. In 1952 a district judge's salary after taxes was equal to a 1939 income of $6,080, the Committee report said.

In addition to President Storey, Chairman Maxwell and President-Nominee Jameson, the members of the Board of Governors calling upon the President were: Joseph D. Stecher, Toledo, Ohio, Secretary; Harold H. Bredell, Indianapolis, Indiana, Treasurer; Howard L. Barkdull, Cleveland, Ohio, Last Retiring President; Allan H. W. Higgins, Boston, Massachusetts; Cyril Coleman, Hartford, Connecticut; P. Warren Green, Wilmington, Delaware; Walter M. Bastian, Washington, D. C.; LeDoux R. Provosty, Alexandria, Louisiana; Donald A. Finkbeiner, Toledo, Ohio; Albert J. Harno, Urbana, Illinois; Frederic M. Miller, Des Moines, Iowa; A. L. Merrill, Pocatello, Idaho and Ross L. Malone, Jr., Roswell, New Mexico.

In addition, the following three nominees who will be elected to the Board in August were in the group: Richard P. Tinkham, Hammond, Indiana; Robert T. Barton, Jr., Richmond, Virginia; Herbert G. Nilles, Fargo, North Dakota.

Results of Election for State Delegates - 1953

■ Pursuant to Article VI, Section 5, of the Constitution of the American Bar Association, the undersigned, constituting the Board of Elections of said Association, hereby certify the results of the 1953 election for State Delegates.

BOARD OF ELECTIONS

Edward T. Fairchild, *Chairman*

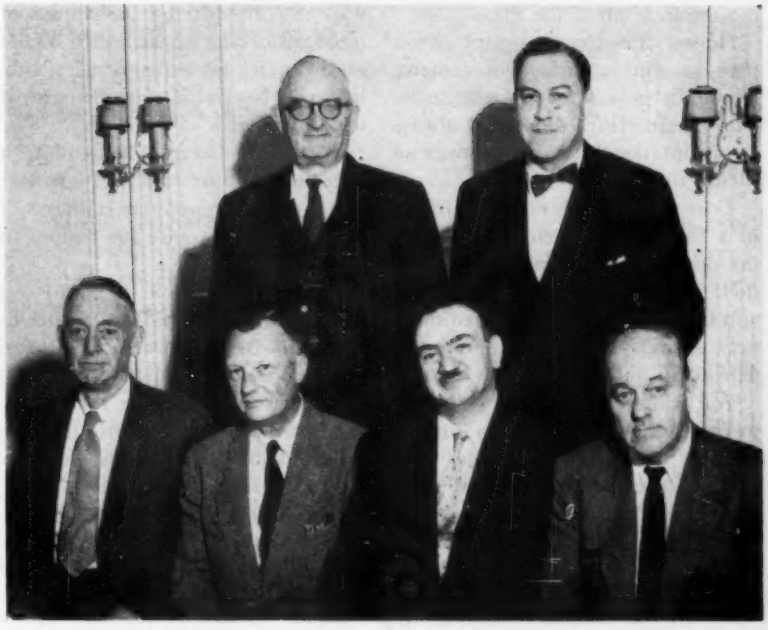
William P. MacCracken, Jr.

Harold L. Reeve

Jurisdiction	Delegates Elected	Ballots Mailed	Ballots Returned	Votes Received
Alabama	Wm. Logan Martin Birmingham	421	258	239
Alaska	R. E. Robertson Juneau	39	29	24
California	Archibald M. Mull Sacramento	3189	1809	943
Florida	E. Dixie Beggs Pensacola	1277	666	522
Hawaii	J. Garner Anthony Honolulu	77	20	10
Kansas	W. D. P. Carey Hutchinson	462	289	208
Kentucky	Edward A. Dodd Louisville	586	447	340
Massachusetts	Allan H. W. Higgins Boston	1303	515	481
Missouri	Robert L. Hecker Kansas City	1366	513	476
New Mexico	Floyd Beutler Taos	181	132	79
North Carolina	Egbert L. Haywood Durham	512	297	146
North Dakota	Herbert G. Nilles Fargo	162	114	111
Pennsylvania	Vincent P. McDevitt Philadelphia	2092	830	764
Tennessee	Charles G. Morgan Memphis	679	294	267
Vermont	Osmer C. Fitts Brattleboro	121	71	70
Virginia	Stuart T. Saunders Roanoke	899	496	400
Wisconsin	Gerald P. Hayes Milwaukee	813	565	208
	Total	14,179	7,345	5,288

Boston Committee for Diamond Jubilee Meeting

Boston Committee for Diamond Jubilee Meeting: Standing—Reginald Heber Smith and Allan H. W. Higgins, Co-Chairmen. Seated (Left to Right)—Sumner H. Babcock, President of Boston Bar Association; Chester C. Steadman, Director of Budget Committee; Joseph Schneider, Vice President of Massachusetts Bar Association; Samuel P. Sears, President of Massachusetts Bar Association, 1950—May, 1953.



Liberty Under Law:

The Only Hope for Peace in the World

■ The keynote of next month's Diamond Jubilee Meeting of the Association was set by Reginald Heber Smith, of Boston, Co-Chairman of the Arrangements Committee, in an address delivered before the editors and publishers of Boston newspapers. Excerpts from the address are set forth on these pages.

■ Boston is the right place to proclaim our faith in "Liberty Under Law" because it was here in Boston that John Adams set the pattern for the American Revolution in 1775. He determined that it should be a law-abiding revolution.

If that seems a contradiction in terms, just recall what happened a few years later during the French Revolution. It was inspired by the same determination of men to be rid of an arbitrary and oppressive monarchy but it cut loose from law and lost its bearings. It proceeded then to riot, bloodshed, rule by the mob, terror, tyranny, and ended, as it could only be ended, by the cannons of Napoleon who thereupon made himself dictator.

John Adams' conception of a law-abiding revolution was quickly challenged by fate. Here we come to a chapter in our history that is not well known. The British soldiers who were involved in what is generally called the Boston Massacre were indicted for murder by the government of King George III. They were penniless. They appealed to John Adams to represent them in court.

He and Josiah Quincy did so. They knew that they risked their lives. They were excoriated by the Tories for obstructing King George III and also by the patriots for having deserted the sacred cause of freedom.

It is not now important that on the evidence a jury of Boston citizens acquitted the soldiers. The tragic incident has become a legend; and, as you know, the object of a legend is not to state facts but to arouse emotions. Those emotions were honest and sincere.

What is important is that John Adams—with the wholehearted support of his wonderful wife Abigail—determined at whatever risk to do his duty as a lawyer. The lawyer's creed is that every man is entitled to his day in court and to be represented by counsel.

What he did as a lawyer determined the course of the American Revolution which proceeded to victory under George Washington and then led to the formation of the Constitution of the United States which made us a nation. And you will note that in the Amendments which we call the Bill of Rights there is the express provision that an accused person shall have the assistance of counsel for his defense.

Also in the Bill of Rights is the First Amendment which states that "Congress shall make no law abridg-

ing the freedom of the Press". . . .

Honest newspapers must from time to time criticize government. Those in government yearn to silence their critics. There is always the temptation by those in power to silence the pen.

True protection is not to be found in a few words which are printer's ink on paper in a book on a library shelf. Those words can spring to life and become a shield only when there exist an independent Bar and an independent judiciary.

You will realize this when I recall to your minds that in 1745 a humble printer named Peter Zenger was indicted because he published some criticisms of the Royal Governor of New York. Andrew Hamilton, a Philadelphia lawyer, defended him and won acquittal by a jury. There was established the principle of freedom of the press which really means that, in a democracy, publicity is essential if the electorate is to be informed.

. We lawyers seem able to plead a client's case quite effectively. In fact one ground for popular criticism of lawyers is that we are too zealous in behalf of clients.

Yet when we come to plead our own cause we stumble and stutter or are mute. By our own cause I mean our professional cause. The legal profession is responsible for the administration of justice in our country. We know it has defects; we know how to cure or remove the defects; but we cannot put reforms into effect without public support; and we do not know how to rally public opinion.

The record shows that time and time again our best efforts to secure legal reforms are thwarted because we have failed to reach the hearts and the consciences of the people.

I have come to the conclusion that the ability to communicate thought about complex problems to the public in words that the people can understand and in language which incites them to action is an art. It may even be a gift which is bestowed only on a few. . . .

At the forthcoming meeting of the American Bar Association we lawyers mean to do our level best to devise and propose reforms in the field of law and the administration of justice which will benefit all the people in our nation and which will enable our nation to advance the cause of international peace.

Committee on Criminal Justice

(Continued from page 573)

done all that we could in the past to improve criminal justice. We have done more to protect property rights in the civil courts than we have to punish criminals and preserve human rights in the criminal courts. We now propose to remedy that situation."

Justice Jackson, a member of the United States Supreme Court for twelve years, former Attorney General and in the 1930's a member of the Roosevelt commission to investigate criminal administration in New York state, said in accepting the appointment that he sees the need for a thorough re-examination of criminal procedures, federal and state. "Our system of criminal justice must serve two ends—convict the guilty and protect the innocent, and there is reason to believe our system is too often failing in one or the other of these respects."

There is, he said, "a startling discrepancy between crimes committed and crimes punished" in the nation.

"Twentieth century crime, in its most dangerous aspect, is urban, organized and financed" Justice Jackson observed. "Our law enforcement methods are largely eighteenth century procedures developed under rural conditions to deal with individual, unorganized crimes. The lack of confidence in our criminal laws is wide-spread, and is shared by responsible elements of society, which rightly look to the legal profession to provide the technical competence for administering the system.

"Our performance in dramatic criminal cases often is not creditable, and the day to day routine work is even less so. No panaceas are probable; we must not yield to impatience for quick or sensational results, but the Bar should lead in a thorough, impartial and workmanlike survey of the criminal processes in this country."

Justice Jackson said he expected the study would be carried out in two phases, the first an intensive investigative and fact-finding survey covering both federal and state jurisdictions and probably requiring three years. The second would be the recommendation of specific remedies.

He contemplated that the first phase of the study would "culminate in a carefully prepared report that will identify the weak spots in our system, the breakdowns from which it suffers, and, so far as possible, the reasons for them".

Justice Jackson said he was proposing that the study of facts be separated from ultimate recommendations for remedies, because he believed when the facts became well known, the Bar and public would insist upon remedial action. He added:

"I should like to see a report on our system as actually administered by the police, prosecutors and judiciary so thorough and fair it would be basic to the thinking of the next generation.

"It has many difficulties and obstacles, not the least of which is the difficulty of getting accurate and complete information on many phases of the subject. Such a project involves an immense amount of work and should have no attractions unless one believes the time has come for a bold and exhaustive inquiry into the way we are performing our professional function of protecting life, liberty and property under free institutions and in the complications of modern society."

Review of Recent Supreme Court Decisions

George Rossman
Editor-in-Charge

ADMINISTRATIVE LAW

Administrative Procedure Act Held Not To Expand Scope of Judicial Review of Deportation Proceedings

■ *Heikkila* v. *Barber*, 345 U. S. 229, 97 L. ed. (Advance p. 566), 73 S. Ct. 603, 21 U. S. Law Week 4249. (No. 426, decided March 16, 1953.)

In this case the Court determined that the Administrative Procedure Act did not enlarge the scope of review of a deportation proceeding beyond that of habeas corpus. Petitioner was an alien ordered to be deported. He sought a review of the deportation order as well as injunctive and declaratory relief, asserting that Section 10 of the Administrative Procedure Act made that type of judicial review available to him. The Government contended that Section 10 was not applicable because the decision of the Attorney General is made "final" by Section 19 (a) of the Immigration Act of 1917. Section 10, by its own terms, does not apply when "statutes preclude judicial review".

Mr. Justice CLARK, for the Supreme Court, held that the word "final" has acquired a special meaning in immigration legislation. The opinion traced the judicial interpretation of the Immigration Act and concluded that judicial intervention in deportation cases is clearly barred except insofar as it is required by the Constitution—in other words, no review of deportation orders is available save by writ of habeas corpus when a question of due process is raised. Despite holdings to the contrary by three Courts of Appeals, which reasoned that habeas corpus itself is a limited form of judicial review, the Supreme Court declared that judicial review of deportation proceedings has always been limited to the enforcement of due process requirements, a scope of inquiry held to be much more limited than the type of judicial review contemplated in the Administrative Procedure Act.

Mr. Justice FRANKFURTER wrote a dissenting opinion in which Mr. Justice BLACK joined. The dissent argued that Congress was not concerned with the technical usage of the term "judicial review" when it enacted the Administrative Procedure Act, and that that Act should be interpreted with "a judicial attitude of hospitality".

The case was argued by Joseph Forer, and Lloyd E. McMurray for appellant, and by Robert W. Ginnane for appellee.

ALIENS

Indefinite Detention of Alien on Ellis Island, for Security Reasons, Held Not To Violate Due Process

■ *Shaughnessy* v. *United States ex rel. Mezei*, 345 U. S. 206, 97 L. ed. (Advance p. 554), 73 S. Ct. 625, 21 U. S. Law Week 4242. (No. 139, decided March 16, 1953.)

Respondent was an alien who had resided in the United States for some twenty-five years. Upon his return from a visit to Europe, the Attorney General ordered him excluded from the country for security reasons. The Attorney General acted upon the "basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest". Respondent was refused admission to more than a dozen countries in Europe and South America. Finally he sought a writ of habeas corpus, alleging that he was being unlawfully confined on Ellis Island.

Mr. Justice CLARK, for the Supreme Court, reversed a Court of Appeals' holding that the confinement was a violation of due process since deportation was patently impossible. The Court viewed the action of the Attorney General as an exclusion proceeding which could bar the respondent from entry into the United States without a hearing under the emergency regulations promulgated pursuant to the Passport Act of 1918, distinguishing this case from *Kwong Hai Chew* v. *Colding*, decided February 9, where a resident alien was held to be entitled to procedural due process on the question of deportation. The Court relied upon the doctrine that an alien's right to enter the country depends upon the will of Congress, and it found that Congress had specifically directed that a landing at Ellis Island was not such an entry into the United States as to give an entering alien the rights of a resident alien.

Mr. Justice BLACK, joined by Mr. Justice DOUGLAS, argued in a dissenting opinion that the Constitution forbade depriving the respondent of his liberty for an indefinite period without a trial. This opinion expressed agreement with that of Mr. Justice JACKSON that the respondent was being denied due process.

Mr. Justice JACKSON, joined by Mr. Justice FRANKFURTER, dissented on the ground that respondent was entitled to procedural due process.

The case was argued by Ross L. Malone, Jr., for the respondent, and by Jake Wasserman for the United States.

ATTORNEY AND CLIENT

Attorney Disbarred from Bar of the Supreme Court

■ *In re Disbarment of Isserman*,

Reviews in this issue by Rowland L. Young.

345 U. S. 286, 97 L. ed. (Advance p. 615), 73 S. Ct. 676, 21 U. S. Law Week 4308. (No. 5, Misc., decided April 6, 1953.)

In this case, the Supreme Court disbarred one of the attorneys found guilty of contempt of court following the trial of the eleven leaders of the Communist Party. The Court took its action following disbarment of the attorney by the Supreme Court of New Jersey.

The CHIEF JUSTICE, speaking for the Court, followed the rule that, while disbarment by a state does not automatically disbar members of its Bar, the Court will, in the absence of grave reasons to the contrary, follow the finding of a state that the character requisite for membership in the Bar is lacking. The Court declared that Rule 2, Par. 5 of the Court places the burden on the respondent to show good cause why he should not be disbarred. Isserman had argued that he had been punished enough for his contempt and that the disbarment was excessive punishment. He also relied upon the absence of a conspiracy on the part of counsel in the trial of the Communists and urged that a period of suspension at most was appropriate punishment. The Court replied that punishment was not the purpose of disbarment, which rests rather on the right of the Court to protect itself as an instrument of justice, and that the absence of a conspiracy was not a factor. While noting that the United States District Court for the Southern District of New York had seen fit only to suspend the respondent, the Court pointed out that action had been taken prior to the New Jersey disbarment. The Court also gave some weight to the fact that the respondent had failed to inform the Court, upon his admission to practice before it, that he had once been suspended from practice in New Jersey following a conviction for statutory rape.

Mr. Justice JACKSON, in a dissenting opinion in which Mr. Justice BLACK, Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS joined, argued that conviction of contempt was not a ground for disbarment. The dissent cited several instances in which attorneys had been convicted of contempt without their standing at the Bar being questioned.

COMMERCE
Transferee of Certificate of Convenience and Necessity Estopped To Contest Its Validity

■ *Callanan Road Improvement Company* v. *United States*, 345 U. S. 507, 97 L. ed. (Advance p. ——), 73 S. Ct. 803, 21 U. S. Law Week 4341. (No. 488, decided May 4, 1953.)

Appellant was the transferee of a certificate of convenience and necessity issued by the Interstate Commerce Commission to operate as a common carrier by water in waters adjacent to New York City. The original certificate, issued by the Commission to appellant's predecessor, had been amended so as to deny the right to engage in towing services. The precedessor had not in fact engaged in towing and accepted the amendment without question. Three years after appellant acquired the certificate, it began this proceeding, contending that the modification was unauthorized and that it was entitled to engage in towing services.

Mr. Justice MINTON, speaking for the Court, held that it was too late for appellant to raise the question of the power of the Commission to modify the original certificate. The Court said that a direct attack on the modification at the time was the proper remedy if the Commission's amendment to the certificate exceeded its powers. It declared that appellant stood in no better position than its predecessor, whose operations had not been curtailed by the amendment and who had acquiesced in it. The Court also pointed out that appellant had invoked the Commission's power to approve transfer of the amended certificate and held that it was therefore estopped to deny its power to issue the certificate in its present form.

Mr. Justice BLACK concurred in the result.

Mr. Justice DOUGLAS dissented without opinion.

The case was argued by William A. Roberts for appellant, and by William J. Hickey and R. Granville Curry for appellee.

COMMERCE
Noncompensatory Railroad Rates Upheld

■ *Baltimore and Ohio Railroad* v. *United States*, 345 U.S. 146, 97 L. ed. (Advance p. 549), 73 S. Ct. 592, 21 U. S. Law Week 4268. (No. 258, decided March 16, 1953.)

The complainant railroads challenged maximum carload rates for carrying certain fresh vegetables set by the Interstate Commerce Commission on the ground that the rates were confiscatory and therefore a violation of due process. The sole basis for the challenge was the allegation that the rates would produce less money than it would cost the railroads to carry the vegetables.

The Supreme Court, through Mr. Justice BLACK, sustained the Commission's rate. In reaching its decision, the Court pointed out that there was no showing that the rates would make any of the railroads operate its entire business at a loss or even carry all fresh vegetables at a loss. The Court held that so long as the rates as a whole afforded the the railroads just compensation for the over-all services, the due process clause was not a bar to the fixing of noncompensatory rates for some commodities when the public interest was served thereby.

Mr. Justice CLARK took no part in the consideration or decision of the case.

The CHIEF JUSTICE concurred in a dissenting opinion written by Mr. Justice DOUGLAS. The dissent questioned whether a confiscatory rate could be "reasonable" and contended that the railroads were entitled to have that issue tried.

The case was argued by Robert H. Bierma for appellant, and by Daniel M. Friedman and Frank A. Leffingwell for the appellees.

CONSTITUTIONAL LAW

Conviction for Holding Religious Service in Public Park Without License Upheld

■ *Poulos* v. *New Hampshire*, 345 U. S. 395, 97 L. ed. (Advance p. 702), 73 S. Ct. 760, 21 U. S. Law Week 4326. (No. 303, decided April 27, 1953.)

Appellant was a member of Jehovah's Witnesses. He was denied a license to hold religious services in a public park and nevertheless proceeded to conduct the services. He was convicted for violation of a city ordinance. The New Hampshire Supreme Court held that denial of the license was arbitrary and unreasonable, but affirmed the conviction on the ground that the proper remedy was a civil action against the licensing authorities.

The Supreme Court affirmed in an opinion written by Mr. Justice REED. The Court held that the ordinance in question, as interpreted by the New Hampshire courts, did not violate freedom of speech or religion guaranteed by the Fourteenth Amendment, since the licensing officials were given no discretion in the granting of permits and had no power to discriminate in their issuing of permits.

The Court held, however, that the arbitrary refusal to issue the license did not constitute a defense to the prosecution for violating the ordinance. The Court reasoned that the state had the right to determine, in the public interest, the reasonable method for correction of the error in denying a license. This case was distinguished from similar cases where defendants were convicted of violation of statutes later held to be unconstitutional.

Mr. Justice FRANKFURTER concurred in the result. His concurring opinion argued that the validity of the ordinance was not before the Court.

Mr. Justice BLACK dissented, writing a short opinion in which he declared that the "preferred position" given to First Amendment guarantees prohibited a state from convicting a man of a crime for making an orderly speech after he has been arbitrarily denied a license to speak.

Mr. Justice DOUGLAS also wrote a dissenting opinion in which Mr. Justice BLACK joined. He argued that, if a citizen can flout an unconstitutional statute which undertakes to deprive him of his freedom of speech, there is no reason why he should be convicted for flouting the agency that arbitrarily denies him a license to speak.

The case was argued by Hayden C. Covington for appellant and by Gordon M. Tiffany for appellee.

COURTS

Section 46(c) of the Judicial Code Authorizes Courts of Appeals To Order Hearings *En Banc*

■ *Western Pacific Railroad Corporation* v. *Western Pacific Railroad Company, Metzger* v. *Western Pacific Railroad Company*, 345 U. S. 247, 97 L. ed. (Advance p. 650), 73 S. Ct. 656, 21 U. S. Law Week 4297. (Nos. 150 and 160, decided April 6, 1953.)

In these cases, the sole question before the Supreme Court was whether Section 46 (c) of the Judicial Code, 28 U. S. C. § 46 (c), requires the consideration by all judges of a Court of Appeals of a request for hearing or rehearing *en banc*. Section 46(c) provides that cases shall be heard by divisions of three judges "unless a hearing or rehearing before the court in banc is ordered by a majority of the circuit judges of the circuit who are in active service". Petitioners contended that this language gave a defeated party the right to ask for a rehearing *en banc* and that the court as a whole must act on such a petition.

This view was rejected by the Supreme Court, speaking through the CHIEF JUSTICE, on the ground that Section 46(c) is addressed to the Courts of Appeals and not to the litigants, and merely vests in those courts the power to order hearings *en banc*. The Court declared that it could not read the statute as giving an automatic second appeal to each litigant in the Courts of Appeals, thus thrusting an unwarranted extra burden on them. The opinion then went on to spell out the scope of a Court of Appeals' power to convene itself *en banc*, declaring that a court must adopt "such means as will enable its full membership to determine whether the court's administration of the power is achieving the full purpose of the statute". It was held to be essential that litigants be left free to "suggest" that a particular case is appropriate for consideration by the full court. The Court emphasized its view that such a suggestion did not necessarily mean that a formal motion was necessary—each appellate court was free to determine what particular procedure it would follow.

Mr. Justice FRANKFURTER wrote a concurring opinion in which he expressed disagreement with language in the Court's opinion which stated that it would be permissible for a court of appeals to delegate to a panel of three judges the power to dispose of petitions for rehearing *en banc*.

Mr. Justice JACKSON dissented on the ground that the Court was opening the way for new complexities in federal practice. He argued that the problem was best left to each individual circuit.

The case was argued by Herman Phleger and Julius Levy for petitioners and by Allan P. Matthew for respondents.

EMINENT DOMAIN

Condemnation of Sewerage System Held To Be Authorized under the Lanham Act

■ *United States* v. *Certain Parcels of Land in the County of Fairfax*, 345 U. S. 344, 97 L. ed. (Advance p. 621), 73 S. Ct. 693, 21 U. S. Law Week 4277. (No. 253, decided April 6, 1953.)

This was a proceeding under the Lanham Act for the condemnation of certain easements in land and

title to sewer mains which comprise the sewerage system of Belle Haven, a residential subdivision in Fairfax County, Virginia. The sewerage system was constructed by respondent Belle Haven Realty Corporation, which agreed to accept nominal compensation for its sewer properties on condition that the Government take the entire system and that the final order protect the Belle Haven householders against any future charges for its use. Possession was taken by court order. Later, the householders intervened, attacking the taking as not authorized by the Lanham Act.

Mr. Justice CLARK, speaking for the Supreme Court, reversed a Court of Appeals' decision that the Lanham Act extends only to land or interests in land and does not authorize the condemnation of a public works system such as this. The Court ruled that Section 201 of the Act, which extended the statute to "public works" included sewers and sewage facilities. The Court also relied upon a 1943 amendment to the Act, saying that it explicitly authorized a condemnation of such property "where funds are allotted for substantial additions . . . and with the consent of the owners thereof. . . ." The Court noted that the Belle Haven Corporation's consent was implicit in its acceptance of nominal damages. The Court also ruled that the intervening householders were not "owners" whose consent was required, declaring that the negotiations would be so cumbersome as to nullify the power granted if the consent of the holder of every servitude to which the property might be subject were necessary.

Mr. Justice JACKSON took no part in the consideration or decision of the case.

The CHIEF JUSTICE wrote a dissenting opinion in which Mr. Justice REED joined. The dissent contended that the Lanham Act had not authorized the taking of a going utility.

The case was argued by Rowland F. Kirks for petitioner and by Frederick A. Ballard for respondents.

LABOR LAW

Peaceful Picketing May Be Enjoined Where Its Purpose Violates State Law

■ *Local Union No. 10* v. *Graham*, 345 U. S. 192, 97 L. ed. (Advance p. 542), 73 S. Ct. 585, 21 U. S. Law Week 4252. (No. 86, decided March 16, 1953.)

In this case, the Supreme Court upheld an injunction prohibiting peaceful picketing carried on for purposes outlawed by a state statute. Respondent general contractors had secured an injunction from a Virginia court forbidding picketing, the purpose of which was to prevent nonunion employees from working on a construction project. The state court acted under a Virginia statute which provides that a contract limiting employment to union members is against public policy.

In affirming the grant of the injunction, Mr. Justice BURTON, speaking for the Court, held that the unions were engaged in more than mere publication of the fact that the job was not 100 per cent union, and that the case did not fall under the doctrine of *Thornhill* v. *Alabama*, 310 U. S. 88, 84 L. ed. 1093, 60 S. Ct. 736, which held peaceful picketing to be a form of constitutionally protected free speech. The Court had no difficulty in finding the Virginia Right To Work Statute valid, noting that a recent decision by the Virginia Supreme Court clearly indicated that the scope and purposes of the statute did not conflict with the Fourteenth Amendment.

Mr. Justice BLACK dissented without opinion.

Mr. Justice DOUGLAS wrote a dissenting opinion. In his view, the case should have been remanded for specific findings on the ground that the record did not clearly establish whether the purpose of the picketing was to deprive nonunion men of employment or merely to keep union men away from the job.

The case was argued by Herbert S. Thatcher for the unions and by Richmond Moore, Jr., for the respondents.

LIENS

Federal Tax Lien Held To Have Priority Over Local Tax Lien

■ *United States* v. *Gilbert Associates, Inc.*, 345 U. S. 361, 97 L. ed. (Advance p. 593), 73 S. Ct. 701, 21 U. S. Law Week 4275. (No. 440, decided April 6, 1953.)

Both the Town of Walpole, New Hampshire, and the Federal Government had asserted tax liens against respondent insolvent corporation. The Supreme Court of New Hampshire held that tax assessments are "in the nature of a judgment" under state law and concluded that the Town was entitled to priority as a judgment creditor under Section 3672 of the Internal Revenue Code.

Reversing for the Supreme Court, Mr. Justice MINTON relied upon the rule that the meaning of a federal statute is to be decided by the federal judiciary. The Court held that the words "judgment creditor" in the Code are used in the usual, conventional sense of a judgment of a court of record and do not include the action of taxing authorities who may be acting judicially under state law. Since the Town had not reduced the property of the insolvent to possession, the Court determined that the Town had only a general, unperfected lien. The Court gave the United States priority under the federal tax lien priority set up by Section 3466 of the Revised Statutes.

Mr. Justice REED, joined by Mr. Justice FRANKFURTER, dissented in an opinion that argued that federal law refers to state law to determine whether action taken by a taxing authority has substantially the same effect as would be given a judgment of a court of record.

The case was argued by Harry Baum for the petitioner.

STATES

City of Philadelphia Denied Leave To Intervene in Suit Between New Jersey and New York

■ *State of New Jersey* v. *State of New York*, 345 U. S. 369, 97 L. ed. (Advance p. 630), 73 S. Ct. 689, 21 U. S. Law Week 4311. (No. 5, Original, decided April 6, 1953.)

In this case, the Court denied the City of Philadelphia the right to intervene in a proceeding brought by the City of New York to modify a decree entered in 1931 enjoining the diversion of the waters of the Delaware River. The State of New York, New York City, the State of New Jersey and the Commonwealth of Pennsylvania, all parties to the original proceedings, formally opposed the intervention. In a *per curiam* opinion, the Court relied upon the *parens patriae* doctrine, holding that the Commonwealth of Pennsylvania had the exclusive right to represent that state's interests and "must be deemed to represent all its citizens". The Court declared that "An intervenor whose state is already a party should have the burden of showing some compelling interest in his own right, apart from his interest in a class with all other citizens and creatures of the state, which interest is not properly represented by the state".

Mr. Justice JACKSON, joined by Mr. Justice BLACK, dissented on the ground that Philadelphia should be allowed to present its own claims.

The case was argued by Abraham L. Freedman for petitioner, the City of Philadelphia, and by John P. McGrath for the City of New York.

NAVIGABLE WATERS

Grant of License to Private Company To Construct Power Plant Upheld

■ *United States ex rel. Chapman* v. *Federal Power Commission, Virginia REA Association* v. *Federal Power Commission,* 345 U. S. 153, 97 L. ed. (Advance p. 574), 73 S. Ct. 609, 21 U. S. Law Week 4259. (Nos. 28 and 29, decided March 16, 1953.)

These were proceedings brought by the Secretary of the Interior and an association of nonprofit rural electric co-operatives challenging the authority of the FPC to grant respondent power company a license to construct a hydroelectric generating station at Roanoke Rapids, North Carolina. Petitioners contended that Congress, by approving a comprehensive plan set out in the Flood Control Act of 1944 for improvement of the Roanoke River Basin, had withdrawn the eleven sites proposed for development in the plan from the licensing jurisdiction of the Commission and had reserved them for public construction.

The Supreme Court upheld the Commission's licensing jurisdiction in an opinion written by Mr. Justice FRANKFURTER. In reaching its decision, the Court went into the history of the Roanoke Rapids project in considerable detail. Petitioners had relied heavily upon Section 10 of the Flood Control Act of 1944 which declared that "The general plan for comprehensive development" of the Roanoke Basin, as proposed by the Corps of Engineers, "is approved". The Court refused to read this as a reservation of the site for public construction, declaring that it was no more than "a legislative finding that the proposed projects, no matter by whom they may be built, are desirable and consistent with congressional standards for the ordered development of the Nation's water resources". The Court noted that public construction was not an integral part of the entire plan for flood control in the area. The Court also gave weight to the fact that the Commission is expressly charged with deciding whether construction ought to be undertaken by the United States.

Mr. Justice CLARK wrote a concurring opinion in which he declared that weight should be given to the administrative interpretation of the 1944 Flood Control Act by the Corps of Engineers and the Commission. He pointed to three cases in which the Commission, with the approval of the Corps, had licensed private construction despite prior congressional approval of public construction.

Mr. Justice DOUGLAS, joined by the CHIEF JUSTICE and Mr. Justice BLACK, wrote a dissent that argued that Roanoke Rapids is part of the public domain and that if Congress had intended to remove the project from the public domain it would have made its purpose clear.

The case was argued by Gregory Hankin and Robert Whitehead for petitioners, and by Bradford Ross, T. Justin Moore, Charles F. Rouse, David W. Robinson, Jr., and Herbert B. Cohn for the respondents.

UNITED STATES

State Tax on Storage of Government-Owned Gasoline Held Not To Violate Federal Sovereign Immunity

■ *Esso Standard Oil* v. *Evans,* 345 U. S. 495, 97 L. ed. (Advance p.——), 73 S. Ct. 800, 21 U. S. Law Week 4345. (No. 378, decided May 4, 1953.)

During World War II, Esso entered into contracts with the United States whereby it agreed to store Government-owned gasoline to alleviate a shortage of publicly owned storage facilities. The United States agreed to assume liability for all state taxes. This case decided the validity of a tax levied by the State of Tennessee upon Esso for the storage of government gasoline under a state statute that levied a tax upon distributors and producers of gasoline within the state. Both Esso and the United States, as intervenor, contended that the tax was barred by the principle of sovereign immunity.

The Supreme Court sustained the tax in an opinion written by Mr. Justice REED. The Court declared that the tax was not a tax on federal property but a tax upon Esso for the privilege of storing gasoline in the state, and that the activity was therefore not immune from state taxation. *United States* v. *Allegheny County,* 332 U.S. 174, 88 L. ed. 1209, 64 S. Ct. 908, was distinguished.

The CHIEF JUSTICE, Mr. Justice BLACK and Mr. Justice JACKSON dissented without opinion.

Mr. Justice FRANKFURTER took no part in the consideration or decision of the case.

The case was argued by Oscar H. Davis for the United States, William Waller for Esso and by K. Harlan Dodson, Jr., for appellees.

WAR

State Attachment Lien Cannot Be As-

serted Against Alien Property Custodian

■ *Orvis* v. *Brownell,* 345 U. S. 183, 97 L. ed (Advance p. 533), 73 S. Ct. 596, 21 U. S. Law Week 4256. (No. 404, decided March 16, 1953.)

This was a suit under Section 9(a) of the Trading with the Enemy Act. Petitioners had judgments and attachment liens, valid under state law, against alien-national debtors. The judgments and attachments were obtained in a New York court after the transfer of Japanese assets was blocked by executive order but before the Alien Property Custodian had vested the assets.

Mr. Justice JACKSON, speaking for the Court, held that, while the freezing order recognized attachment liens insofar as they determined relationships between creditor and enemy debtor, it did not permit the transfer of a property interest in the blocked funds that could be asserted against the Custodian. The opinion pointed out that the freezing order forbade "transfers of credit" and "transfers of any evidences of indebtedness or evidences of ownership of property" and that General Ruling No. 12 specifically applied this prohibition to the creation of a lien. The holding of the Court left the claim pending as one for payment of a debt under Section 34 of the Act.

Mr. Justice CLARK took no part in the consideration or decision of the case.

Mr. Justice DOUGLAS, joined by Mr. Justice FRANKFURTER, dissented. The dissenting opinion argued that Section 34(i) recognizes that liens may be asserted against the Custodian and that the lienholders, in effect, were left in no better position than unsecured creditors by the Court's ruling.

The case was argued by Donald Marks for the petitioners, and by James L. Morrisson for the respondent.

WAR

Soldiers' and Sailors' Relief Act Forbids Assessment of State Personal Property Tax Against Nondomiciliary Serviceman

■ *Dameron* v. *Brodhead,* 345 U. S. 322, 97 L. ed. (Advance p. 606), 73 S. Ct. 721, 21 U. S. Law Week 4294. (No. 302, decided April 6, 1953.)

Petitioner, a domiciliary of Louisiana, was an Air Force officer stationed in Colorado. He sued to recover a personal property tax assessed by that state, claiming that Section 514 of the Soldiers' and Sailors' Relief Act forbade imposition of the tax.

The Supreme Court, through Mr. Justice REED, sustained this contention. The Court rejected an argument that Section 514 was unconstitutional, holding that the statute merely provides that the taxable domicile of servicemen shall not be changed by military assignment, a matter within Congress' constitutional power to declare war and to raise and support armies.

An argument that the purpose of Section 514 was to prevent multiple taxation, and that the Section was therefore inapplicable since the domiciliary state had imposed no such tax, was rejected on the ground that Congress had chosen the broader technique of saving the sole right of taxation to the state of original residence, whether or not that state exercised its right.

Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, dissented on the ground that the tax did not burden the performance of any federal function.

The case was argued by Philip Elman for the petitioner and by Leonard M. Campbell for the respondent.

WAR

Validity of Job Seniority Credit for Pre-employment as Well as Post-employment Military Service Upheld

■ *Ford Motor Company* v. *Huffman,* 345 U. S. 330, 97 L. ed. (Advance p. 598), 73 S. Ct. 681, 21 U. S. Law Week 4282. (No. 681, decided April 6, 1953.)

In this case, the Court held valid collective-bargaining agreements whereby an employer, in determining seniority rights, gives its employees credit for pre-employment as well as postemployment military service. Appellee, a Ford employee, who entered military service while employed at Ford, contended that such a provision in a collective bargaining agreement violated his seniority rights under the Selective Training and Service Act, since in some cases employees who entered Ford employ after him were credited with more seniority because of their pre-employment military service.

The Supreme Court unanimously affirmed the validity of the agreement in an opinion written by Mr. Justice BURTON. The Court reasoned that there was little justification for giving substantial seniority benefits to a serviceman with only brief prior civilian employment while denying the same benefits to a veteran who was inducted before having a chance to enter any civilian employment. Such a distinction, it was said, would adopt "the doubtful policy of favoring those who stay out of military service over those who enter it". The Court overturned a holding of the Court of Appeals that the union had exceeded its authority as bargaining representative under the National Labor Relations Act when it accepted the seniority provision. The Court said that the complete satisfaction of all the employees whom the union represents could hardly be expected and that a "wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents".

The case was argued by William T. Gossett and Harold A. Cranefield for petitioner, and by Herbert Monsky for respondent.

Courts, Departments and Agencies

George Rossman • **EDITOR-IN-CHARGE** **Richard B. Allen** • **ASSISTANT**

Adoption . . . when abrogation possible in New York.

■ The New York adoption statute provides that foster parents may seek an abrogation of the adoption on grounds of "the wilful desertion of such foster parent by such foster child, or because of any misdemeanor or ill behavior of such child". But, the Court of Appeals of the state has ruled that provision of the statute applies only where the foster parent seeks abrogation before the child has become 21. The Court felt that the statutory ground for abrogation smacked of the relationship of minors and parents and not the duties "entirely different in kind and number, of grown-up sons and daughters to their fathers and mothers". The Court expressly said that it was not deciding whether the abrogation statute might apply, even after the foster child attained majority, where there was fraud or other infirmity in connection with the adoption itself.

(In re Adoption of Eaton, C.A. N.Y., March 6, 1953, Desmond, J., 111 N. E. 2d 431.)

Antitrust Laws . . . not applicable to organized baseball.

■ Two more recent attempts to subject organized baseball to the Sherman Act [15 U.S.C.A. §§1-3] and the Clayton Act [15 U.S.C.A. §15] on the ground that it is engaged in trade or commerce within the meaning of those words as used in the Acts have been thwarted by the Court of Appeals for the Sixth Circuit.

Since the war several attempts have been made to recover treble damages under the federal antitrust laws from the commissioner of baseball and baseball clubs. One bone of contention has been the allegation that the so-called reserve clause employed in all professional baseball players' contracts is illegal. This clause amounts to an option in favor of the club precluding players from dealing freely to sell their own services. But the attempts have always run afoul of *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* 259 U.S. 200, in which the Supreme Court held that baseball was not trade or commerce. See, for example, *Toolson* v. *New York Yankees,* 101 F. Supp. 93, affirmed 200 F. 2d 198.

In the instant cases, as previously, the argument was made that since baseball clubs now sell radio and television rights on a nationwide scale, the character of organized baseball has changed since the *Federal Baseball Club* case, and that the Supreme Court itself would now hold differently. But the Court in the instant case said it could not refuse to follow clear precedent "on the speculation that the Supreme Court may change its decision in this regard in the future".

(Kowalski v. *Chandler et al.* and *Corbett* v. *Chandler et al.,* C.A. 6th, February 20, 1953, 202 F. 2d 413 and 428.)

[NOTE: On May 25, 1953, the Supreme Court granted certiorari in the *Toolson, Kowalski* and *Corbett* cases.]

Bankruptcy . . . what passes with a sale of insurance expirations.

■ In the fire and casualty insurance business the term expirations refers to copies of issued policies maintained by an agency. They are recognized as property of value since they may be used handily in soliciting renewals. In the instant case an insurance agency owner became a bankrupt and sale of the expirations and the accompanying daily reports was made by the referee. These were delivered by the bankrupt, but the purchaser contended that it had also bought and was entitled to receive the bankrupt's ledger, on the theory that the bankrupt could reconstruct the information contained in the expirations and daily reports from his ledger and thus could continue to solicit that business. In essence the claim of the purchaser was that in purchasing the expirations it had also bought the exclusive right to use the information they contained.

The Court of Appeals for the Fifth Circuit held that the asset of the expirations did not embrace the personal right of the bankrupt to contract against interference with the customers represented by the expirations. The Court said the situation was the same "as if the bankrupt had made a sale . . . without any express or implied warranty or collateral agreement whatever".

(Heyl v. *Emery & Kaufman, Ltd.,* C.A. 5th, May 6, 1953, Russell, J.)

Civil Rights Act . . . applicability.

■ Several recent attempts to extend the applicability of the Federal Civil Rights Act have been refused by federal courts. The section under consideration [8 U.S.C.A. §43] reads:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

In one case the defendant was a Massachusetts state judge who had

Editor's Note: Virtually all the material mentioned in the above digests appears in the publications of the West Publishing Company or in The United States Law Week.

committed the plaintiff to a state reformatory in exact compliance with procedure established by statute. The statute did not provide for any notice to the person committed nor did it afford him an opportunity for a hearing. The United States District Court for the District of Massachusetts found that the proceeding lacked the necessary elements of due process and thus violated the plaintiff's rights under the Fourteenth Amendment, but adhered to the common law rule that a judge, when acting with proper jurisdiction over the subject matter and the parties, is immune from civil suit for damages, and therefore dismissed the action.

To do so, the Court had to refuse expressly to follow the Court of Appeals for the Third Circuit in *Picking* v. *Pennsylvania Railroad Co.*, 151 F. 2d 240, in which that Circuit adopted the rule that the Civil Rights Act supersedes the common law immunity and held that "every person" included state judges acting in their official capacity. The Court in the instant case traces the history of the principle of judicial immunity to civil suit and expresses the opinion that the decision in the *Picking* case is unsound. Congress did not intend, the Court declared, to abrogate a principle so deeply rooted, and did not intend to introduce a situation feared by Chancellor Kent in 1810 in *Yates* v. *Lansing*, 5 Johns. N.Y. 282, in which "no man would accept the office of judge, if his estate were to answer for every error of judgment, or if his time and property were to be wasted in litigations with every man whom his decisions might offend". The Court said that its conclusion was reached "in order to insure that state judges, in accordance with a sound public policy, may speak freely and vigorously, as they should, in interpreting state statutes which they must construe in the performance of their duties".

(Francis v. *Lyman et al.*, U.S. D.C. Mass., December 8, 1952, Ford, J., 108 F. Supp. 884.)

■ In another case a person who had been committed to an Alabama mental institution following a procedure conducted in accordance with state statute sought to invoke the Civil Rights Act against private persons who instituted the lunacy proceeding. Under Alabama law notice to the party involved is discretionary with the court and in the present case none was given and there was no hearing.

The Court of Appeals for the Fifth Circuit found it unnecessary to rule on the due process aspect of the case since the defendants were private persons, but held that the "mere institution of the lunacy proceeding, without more, is too remote in the chain of causation to support an action under 8 U.S.C.A. §43 for 'causing' plaintiff to be deprived of the right of due process". To hold otherwise, the Court said, would impose a "vicarious liability" not contemplated by the statute, since the defendants were entitled to act on the presumption that the lunacy statute was valid and that in administering it the judge would proceed in accordance with the essential requirements of law.

(Whittington v. *Johnston et al.*, C.A. 5th, January 29, 1953, Strum, J., 201 F. 2d 810.)

■ In still another case the plaintiff was an Illinois convict who was paroled in 1944. In 1948 and 1949 he was jailed in Ohio and in 1949 sent to a federal penitentiary. Although the Illinois authorities knew of these confinements, he was not declared a parole violator and a warrant and detainer were not sent to the federal prison until 1953. The plaintiff contended that Illinois had waived its right to have him returned as a parole violator when it failed to take any action after his Ohio arrest, that the 1953 action was a conspiracy to deprive him of his civil rights, and that therefore the Illinois Director of Public Safety and two officials of the state's Division of Supervision of Parolees were liable for damages under the Civil Rights Act.

The Court of Appeals for the Seventh Circuit held that the failure of Illinois authorities to act on the parole violation in 1948 did not give rise to a cause of action under the statute and that the Illinois parole authorities "are not personally liable for damages because federal prison authorities . . . take into account an unexecuted warrant charging plaintiff with a violation of parole."

(Whiting v. *Seyfrit et al.*, C. A. 7th, May 5, 1953, Duffy, J.)

Constitutional Law . . . blighted areas redevelopment.

■ An amendment to the Illinois Blighted Areas Redevelopment Act authorizing land clearance commissions to acquire by eminent domain predominantly open areas for the purpose of clearance and eventual sale to private builders and developers has withstood a ramified constitutional attack in the Supreme Court of Illinois.

The original Act, passed in 1947, provided for acquisition of "slum and blighted areas" by the land clearance commissions and was declared constitutional in *People ex rel. Touhy* v. *Chicago*, 399 Ill. 551, and *Chicago Land Clearance Commission* v. *White*, 411 Ill. 310. An amendment in 1949 extended the scope of the Act by providing for acquisition of open land which was unmarketable for housing or other economic purposes because of "obsolete platting, diversity of ownership, deterioration of structures or site improvements, or taxes and special assessment delinquencies usually exceeding the fair value of the land".

The addition of this amendment, it was contended, so transcended the scope of the title of the original Act that the Illinois constitutional provision that no act shall embrace more than one subject expressed in the title was violated. But the Court held that acquisition and clearance of such open areas as those described in the amendment were sufficiently related to slum clearance to escape constitutional proscription. The Court said that slum clearance and revitalization of dead areas, with the attendant construction of additional housing, are both "germane to a single subject—the elimination of slums". The Court also ruled that the statute defined "fair value" ade-

quately, did not authorize the use of public funds for purposes other than that for which they were raised, provided for the use of funds for a public use so that eminent domain could properly be employed, did not authorize a deprivation of property without due process of law, and did not delegate legislative powers and functions to land clearance commissions.

(People ex rel. Gutknecht v. *Chicago,* Sup. Ct. Ill., March 23, 1953, Schaefer, J., 111 N. E. 2d 626.)

Contempt . . . successive punishments for successive contempts.

■ A New York court has ruled that it cannot refuse an order directing a witness before a grand jury to answer a question on the plea of the reluctant witness that on two separate former occasions he had been asked the same question and upon his refusal to answer had been punished by fine and imprisonment for contempt. The former contempt adjudgments were in December of 1952 and January of 1953, and in April of 1953 the witness was subpoenaed before the grand jury again. In the meanwhile informations charging criminal contempts had been filed and were pending.

The Court held, however, that successive contumacious refusals to answer proper questions on different occasions constitute separate and distinct acts of contempt, even though the questions be the same, and may be punished as separate offenses. Neither did the pending criminal contempt charges impress the Court. The civil and criminal proceedings, it said, were wholly independent of each other.

(Matter of Amato, N.Y.S.C., Richmond Co., April 21, 1953, Benvenga, J.)

Criminal Law . . . sentencing under habitual criminal statute.

■ In sentencing a person convicted of burglary a Pennsylvania trial court gave the prisoner an enhanced sentence which it recorded as being imposed "pursuant to [the state's habitual criminal act]". Although it was a fact that the prisoner was eligible for the increased sentence, neither in the indictment, during the hearing, nor at the time of sentencing was he informed that the court intended to deal with him as a second offender.

In a habeas corpus proceeding the Court of Appeals for the Third Circuit has ruled that the manner in which the Pennsylvania court utilized the statute deprived the prisoner of the procedural due process of law to which he was entitled under the Fourteenth Amendment. The Court found the settled Pennsylvania law to be that a defendant need not be "formally indicted and convicted as a previous offender in order to be sentenced under the act", but that he has a right to know at the time of sentencing. The Court could not agree with the contention that the error was a harmless one of procedure, since if correct procedure were followed, the same sentence could have ensued. The vice of the method used, the Court said, was in the judge's undisclosed knowledge of the former offense, which precluded the prisoner from offering explanation and mitigating circumstances regarding it.

(U.S. ex rel. Collins v. *Claudy,* C.A. 3d, May 7, 1953, Hastie, J.)

Evidence . . . privilege.

■ The Supreme Court of Ohio has ruled that a municipal chief of police is not privileged from disclosing police department records and statements in a civil suit when he is not a party to the suit.

The case arose when the police chief of Cleveland refused to obey a *subpoena duces tecum* issued by a notary public in connection with the taking of a deposition in a wrongful death action against two police officers who had shot the decedent while searching for another party suspected as a bank robber. The flouted order had directed the chief to produce the department's records made during investigation of the death.

The Court started from the premise that there is a general duty requiring everyone to give what testimony he can and that any privilege, being in derogation of this rule, must rest upon a statutory or constitutional provision. No such provision applicable to the facts here was found in Ohio. Two justices dissented on the ground that to force the police department to divulge in a civil suit information gained in the course of an official investigation would destroy its usefulness.

(In re Story, Sup. Ct. Ohio, March 18, 1953, Taft, J., 111 N. E. 2d 385.)

Grand Juries . . . scope and power . . . expunging presentment of grand jury.

■ The October, 1952, grand jury in the United States District Court for the Southern District of New York, after an inquiry in which thirteen officials of a union were questioned, returned a presentment or report declaring that the non-Communist affidavits filed by these thirteen with the NLRB in compliance with the Taft-Hartley Act were not "worth the paper they were written on" and that there was "obvious non-compliance" with the Act. No indictments were returned, but the jury recommended that the NLRB revoke the certification of the union of which the thirteen were officials and that Congress consider adding to the non-Communist affidavits a waiver by the signer of his Fifth Amendment privilege against self-incrimination.

When the NLRB attempted to implement the recommendation of the jury, the union was granted a permanent injunction blocking the action on the ground that the Board had no authority to inquire into the truth or falsity of the affidavits required by the Act. *United Electrical, etc.* v. *Herzog et al.,* 110 F. Supp. 220 (For note, see 39 A.B.A.J. 503.; June, 1953.)

Now upon motion of the union the controversial presentment or report has been expunged from the records of the District Court. In a strong and lengthy opinion developing some of the historical aspects and attributes of grand juries, the Court based its expunging order on two main grounds.

First, the Court held that the rec-

ommendations made to the executive and legislative branches of the Federal Government were beyond the scope of the grand jury's authority and violated the constitutional concept of separation of powers. Moreover, the Court declared, it was not within the power of the jury to issue a presentment making accusations against certain persons but falling short of an indictment.

Secondly, the Court considered the fact that the presentment was made public or at any rate deliberately "leaked" to the press by government attorneys, and found that both historical bases and Rule 6(e) of the Federal Rules of Criminal Procedure require secrecy as to the proceedings before a grand jury other than its deliberations and vote.

(Matter of the Application of United Electrical, Radio & Machine Workers of America (UE) et al., U.S. D.C. S.D. N.Y., April 13, 1953, Weinfeld, J.)

Indictment and Information . . . charging prosecuting attorney with nonfeasance.

■ The duties, powers and obligations imposed on a prosecuting attorney in New Jersey have been explained and clarified in a decision of the Supreme Court of that state in an opinion written by Chief Justice Vanderbilt.

A multicount indictment charged a county prosecutor with nonfeasance in office for neglecting to use "all proper, reasonable, effective and diligent means within his power" to curb gambling. On review of an order dismissing the indictment as insufficient, the Court, with two judges dissenting, made an extensive examination of the powers and duties of county prosecutors and concluded that the indictment was sufficient. Stressing the fact that prosecutors were furnished with investigative staffs, the Court pointed to the state's statute directing that prosecutors "shall use all reasonable and lawful diligence for the detection, arrest, indictment and conviction of offenders against the law". This language, the Court said, could not be restricted to the prosecution of matters where complaints had already been filed.

The Court rejected the defendant's contention that because he was a quasi-judicial officer he was immune from criminal attack unless corruption were charged in the indictment. Endorsement of such a theory, the Court declared, would place a lazy prosecutor in a position of being able to suspend the laws by honest inaction. Neither did the Court view favorably the contention that the indictment was bad because it failed to allege abuse of discretion. An allegation of unlawfulness and wilfulness was found sufficient, since this terminology negatived the defendant's exercise of good faith. Moreover, the Court said, the discretion that a prosecutor may exercise in determining how and whom he shall prosecute is not absolute and must bow to general standards which the Court found adequately set forth in case law. The Court also turned down the defendant's "novel proposition" that constitutional impeachment and statutory suspension were the sole remedies available to deal with the misconduct of a county prosecutor.

(State v. *Winne,* Sup. Ct. N. J., March 30, 1953, Vanderbilt, C.J., 96 A. 2d 63.)

Professional Licenses . . . suspension for conviction of crime.

■ The temporary suspension of the licenses of two physicians and the reprimand of a third on the grounds of their convictions in a federal court for contempt of a congressional committee have been upheld by the New York Court of Appeals. The three doctors were members of the executive board of the Joint Anti-Fascist Refugee Committee and had refused to obey a *subpoena* to produce certain records of the organization. After the convictions the New York Board of Regents took the disciplinary action under the state's statute authorizing such action against a physician who "has been convicted in a court of competent jurisdiction, either within or without this state, of a crime".

The doctors contended that the statute could apply only to offenses that were crimes under New York law and that since contempt of Congress was not such a crime, the statute was not applicable. But the Court ruled that the statutory language "without this state" was clear on this point. Furthermore the Court rejected the physicians' contention that the legislative intent of the statute was to authorize disciplinary action only in the case of offenses involving moral turpitude or relating to professional ability and conduct.

(Barksy et al. v. *Board of Regents,* C.A. N. Y., February 26, 1953, Desmond, J., 111 N. E. 2d 222.)

Prosecuting Attorneys . . . power to exercise literary censorship.

■ A New Jersey court has granted injunctive relief to a book publisher who was the victim of censorship powers exercised by a county prosecuting attorney and a so-called citizens committee which advised him on what books should be withdrawn from sale by booksellers in his county.

The Prosecutor of Pleas of Middlesex County aided in the establishment of a Committee on Objectionable Literature and assigned a detective of his staff to procure books and magazines which were then read and evaluated by the members of the committee. When the committee found a particular book or magazine objectionable, the prosecutor wrote booksellers advising them of the committee's decision and requesting them to discontinue selling the proscribed material.

The Court, in granting an injunction against the county prosecutor's course of action, termed the procedure "a clear case of previous censorship in the area of literary obscenity" and held that the action of the prosecutor "was illegal and beyond the scope of his official authority". The Court rejected the argument that its action amounted to an equitable interference with enforcement of the criminal law. While equity cannot enjoin enforcement of

the criminal law, the Court said, it can restrain illegal interference by peace officers with legitimate business under the guise of law enforcement. Neither did the contention that the book in question was "obscene", "indecent" and "lascivious" within the meaning of New Jersey statutes impress the Court, because the prosecutor had not proceeded in the regular manner to enforce those statutes.

Perhaps the most interesting feature of the opinion is the long and engrossing discussion of the legal and historical aspects of literary censorship.

(Bantam Books, Inc. v. *Melko,* Super. Ct. N. J., Chan. Div., March 31, 1953, Goldmann, J., 96 A. 2d 47.)

State Employees . . . overtime compensation.

■ In a series of cases the Supreme Court of California has rejected the claims of several former state employees that they were entitled to overtime compensation.

In one case the ex-secretary of the state's lieutenant governor claimed compensation for hours she had worked in excess of the regularly established office hours. She had been in a non-civil service position and was paid a monthly salary. She contended that her employer had promised her that she would be paid for overtime work.

The Court held, however, that she could not enforce her claim for overtime compensation in the absence of either a contract or a statute to support it. No contract was found to exist because no overtime provisions had been approved by the state Department of Finance when that agency had approved the salary as fixed by the employer. Neither could the Court find any statute supporting her position.

Treu v. *Kirkwood,* Sup. Ct. Calif., April 3, 1953, Edmonds, J., 255 P. 2d 409.)

■ In two other cases former officers in the California State Highway Patrol have lost similar claims for compensation for overtime work. All these positions were civil service. In these cases the Court held that prior to February 6, 1943, there was no statutory provision in California that would support a civil servant's claim for overtime in a monthly salary position. That salary was deemed to be for all services performed, no matter how many hours worked, and any agreement of the employer to allow compensating time off would not require monetary compensation in lieu thereof if the time off could not be given. For overtime worked after the statute of February 6, 1943, the Court allowed overtime compensation.

(Martin et al. v. *Henderson* and *Jarvis* v. *Henderson,* Sup. Ct. Calif., April 3, 1953, Edmonds, J., 255 P. 2d 416 and 426.)

NOTICE OF ANNUAL MEETING OF MEMBERS AMERICAN BAR ASSOCIATION ENDOWMENT

■ The annual meeting of members of the American Bar Association Endowment will be held during the week of the Annual Meeting of the American Bar Association, August 23-28, 1953, at Hotel Statler, Boston, Massachusetts, for the following purposes:

(1) Acting upon a proposed amendment to the By-laws whereby Article IV, Section 3 would be amended by deleting the words "but in no one year shall an amount in excess of 20 per cent thereof be expended", so that said Section 3 shall read: "Unless prohibited by the terms of the gift, donation or bequest, this corporation may by vote of four-fifths of its Directors expend the principal of any gift, donation or bequest, for any or all of the purposes specified in the Articles of Incorporation."

(2) Transaction of such other business as may come before the meeting.

All members of the American Bar Association are members of the Endowment.

The purpose of the proposed amendment is to permit the American Bar Association Endowment to complete payment to the American Bar Foundation of a grant of $400,000 to be used toward the construction of a Bar Research and Library Building and toward the conduct of research therein.

Department of Legislation

Charles B. Nutting, Editor-in-Charge

■ Advice to young lawyers interested in bill drafting is frequently too general to be of much value. Professor Checkley, in the following article, indicates various sources of aid to the would-be draftsman. His suggestions should be of considerable value to those who cannot obtain formal instruction in the preparation of legislation.

A Practical Bibliography on Bill-Drafting

by Thomas S. Checkley, Law Librarian and Associate Professor of Law, University of Pittsburgh

■ There comes a time in every young lawyer's life when he is faced with his first request to draft a statute, bill, ordinance or regulation. Our editor has suggested to me that now is the time for all good men to come to his aid.

This note, in the nature of an annotated list of readily available materials on bill-drafting, is addressed to a mythical person: an average young lawyer in an average sized town with average (meager) library resources. It is as practical as I know how to make it for it is the practice, not the theory, of bill-drafting that is at a low ebb.

The chances are overwhelming that our mythical bill-drafter-to-be has had no formal instruction in how to think about, how to prepare for, how to research, and how to draft statutes. For decades the legal profession has debated the why, how, and where of such instruction but, as one author put it, it has been like the weather in New England—everybody talks about it but no one does anything about it.[1] Even if Average, Esq., has had a formal course in legislation, probably he is unprepared to draft a law for, with one or two exceptions, these courses deal only with such subjects as common law and statute law, legislation processes, legislative organization, and statutory interpretation and construction. The mechanics of bill-drafting are still stepchildren, unwanted and neglected.

The first step when faced with such a request is to stop, look and listen: Are you prepared to spend many hours[2] in detailed, exacting research, for a small fee and probably for an ungrateful client? Are you willing to learn a highly specialized science (or art), for the satisfaction only of knowing you have done a good job, which will no doubt go unnoticed? Should you undertake this task, when there may be better qualified persons available for the job? As a practical matter, and possibly an ethical one, get rid of as much of the job as possible.

The way to be rid of the task is to find out if there is a *good*[3] bill-drafting service available to you and your client. Congress and a large majority of the states now have legislative reference bureaus, law revision commissions, legislative counsels, and attorney general's office. Some of these have bill-drafting services available to legislators and executive statutory revisers attached to the officers. Most have research and reference services. Rarely, a state university or private fund has bill-drafting services available to all. Your city may have a drafting service, or may belong to a municipal league which has such a service.

Do not be discouraged if only reference and research services are available for this is the greatest part of your task, requiring the resources of the best specialized libraries. I repeat: If possible, get rid of this job of bill-drafting.

If, however, the mortgage is due, or such services are unavailable, or for some such reason as political tactics, you can not so rid yourself, write to:

1. The appropriate state agency, usually the Legislative Reference Bureau, requesting a copy of any drafting manual they may have made up.
2. One or several of the following:
   a. Rocky Mountain Law Review, University of Colorado School of Law, Boulder, Colorado, for a copy of Menard, "Legislative Bill Drafting", 23 *Rky. Mt. L. Rev.* 127 (1950) $1.
   b. Oregon Law Review, University of Oregon, Eugene, Oregon, for Cullen, "Mechanics of Statutory Revision", 24 *Ore. L. Rev.* 1 (1944) $.75.
   c. Canadian Bar Association, 88 Metcalfe St., Ottawa, Ontario, Canada, for MacTavish, "Rules of Drafting", 26 *Can. Bar Rev.* 1231 (1948) $1.
   d. Minnesota Law Review Foundation, University of Minnesota, Minneapolis, Minn., for Kennedy, "Legislative Bill Drafting", 31 *Minn. L. Rev.* 103 (1947) $1.
3. Foundation Press, Inc., 268 Flatbush Ave. Ext., Brooklyn 1, N. Y., for Read and MacDonald, *Cases and Materials on Legislation*, 1948. $8.50.

These materials should be purchased as it will be necessary to refer to them constantly. Their cost is low and their value lasting.

While you are waiting for these materials to arrive, learn all you possibly can concerning the problem to be solved by your client's law-to-be. This will take the bulk of your time,[4] but will be well rewarded by the knowledge that without a thorough investigation a well-written law would be impossible. A person who knows his subject until it runs out his ears can always, with the aid of a few drafting rules, turn out a good law; a perfect technician in legisla-

1. Julius Cohen, "On the Teaching of 'Legislation' ", 47 *Col. L. Rev.* 1301 (1947).
2. H. W. Jones, "Some Reflections on a Draftsman's Time Sheet", 35 *A.B.A.J.* 941 (1949).
3. H. W. Jones, "Bill Drafting Services in Congress and the State Legislatures", 65 *Harv. L. Rev.* 441 (1952).
4. Jones, *supra* note 2.

tive drafting without such knowledge can not write a good bill.

Keep a time sheet, not only for fee purposes, but to show your client just what is involved. If technical and scientific knowledge is necessary, acquire it, or enough of it to understand the specialists on whom you must rely. (Is there a trial lawyer fool enough to cross-examine a doctor without first becoming himself well versed in the injury in point?) Don't be satisfied until you have reached the point where you can point out to your client many facts he failed to consider.

Then go into "conference" for further policy considerations and instructions. Try to anticipate any and all future difficulties, knowing this is an ideal, not a hard and fast goal.

To systematize your research, follow as closely as possible the check list in Jones, "Notes for a Legislative Research Check List."[5] You will not have the library resources for some of these suggestions, but at a minimum check thoroughly your own state statutes bearing on the subject. Who knows, there may already be such a law on the books, or a constitutional provision preventing one. For relaxation, read some semantics and some sociology. Brush up on your statutory construction and interpretation. Read the materials on subjects in which you are weak in any of the volumes listed under Cases and Materials below.

When you think you are ready to write, stop. By all means read the article, "New Ways To Write Laws", by Professor Alfred F. Conard in the *Yale Law Journal*.[6] You owe it to yourself and the legal profession. Conard urges the draftsman to write for the public, or such segments of it as will be affected by the law, and to ignore those for whom laws are traditionally drafted, namely legislators, lawyers and judges. Or rather, if one writes for the public, the rest will be satisfied. He concludes with "Laws should be written with more emphasis on making readers understand what the law commands, and with less emphasis on controlling the judges by rigid grammatical constructions. Judges are more likely to be controlled by clear statements of purpose".[7]

Isn't it a sad commentary on the state of statute-drafting that such a simple point is revolutionary?

The literature of bill-drafting, broadly used, is as follows:

1. Cases, Materials and Comments on Legislation.

These volumes, designed largely for use in courses on legislation, are of invaluable aid to a lawyer with meager library resources. Except for the comments, which are of great value in tying together the other materials and in posing problems as yet unanswered, the bulk of these books consists of reprints of source materials not usually available in small libraries, and oftentimes not handily available in large ones. In addition to the cases, materials are taken from treatises, handbooks, law reviews, annual reports, etc. Valuable as this reprinting is, it is the organization of the materials that is the main value of these books. If one reads the materials under each heading, and follows up the references when necessary, he has a firm grasp on that subject. Each has its minor faults, and different emphases, but they are the best materials available today.

The titles are listed in order of their immediate usefulness for statute-drafting, in the narrow sense.

a. Read, Horace E., and John W. MacDonald. *Cases and Other Materials on Legislation.* Brooklyn, The Foundation Press, 1948. Pages 1357. $8.50.

b. Nutting, Charles B., and Shelden D. Elliott. *Cases and Materials on Legislation.* St. Paul, West Publishing Co., 1950. Pages 629. $8.50.

c. Lenhoff, Arthur. *Comments, Cases and Materials on Legislation.* Buffalo, Dennis & Co., 1949. Pages 1046. $8.00.

d. Horack, Frank E. Jr. *Cases and Materials on Legislation.* Chicago, Callaghan & Co., 1940. Pages 829. $7.00.

e. Cohen, Julius. *Materials and Problems on Legislation.* Indianapolis, The Bobbs-Merrill Co., 1949. Pages 567 and 69. $7.50.

2. Manuals on Bill-Drafting.

These manuals, usually written from a particular state's viewpoint, are a real aid for lawyers in that state as they customarily set out that state's constitutional requirements as to form and style of bills, the requirements of the Statutory Construction Act if there is one, the rules of the legislature, and general suggestions as to form, good English usage, and grammar. If your state has one, by all means try to get a copy. One from another state is valuable as a checklist. Some are published as pamphlets, others as law review articles. Their quality varies greatly; do not blindly follow.

3. Legal Periodical Materials.

These materials cover nearly the entire field, being strongest in theory and weakest in practice. They range from articles pleading for a sociological approach to statute writing, to long articles on the use of "and/or". Each compilation volume of the *Index to Legal Periodicals* has tons of references to such materials. Most of them are in reviews that are unavailable in the average library. Use the books listed in 1 above for reprints of the leading articles, and as an index to the rest.

4. Treatises.

a. On bill-drafting. There are several of these, all quite old, and only one, Chester L. Jones, *Statute Law Making in The United States,* was written specifically for the United States. This one, and the ones by Lord Thring and by Sir Courtenay Ilbert, are useful but do not make a special effort to find them.

b. On statutory construction and interpretation. There are two modern treatises, and one old classic, on this subject which are specifically applicable to the United States. All three are likely to be in even a small library. They contain some mate-

5. 36 *A.B.A.J.* 685 (1950).
6. 56 *Yale L. J.* 458 (1947).
7. *Id.* at 481.

rial on the form and content of bills, and can be used in the drafting process. Use them largely as references, unless you have no choice, for they, like appellate cases, are concerned with bad drafting and only indirectly with the rules of good drafting. They tend to make the draftsman overemphasize the role of the courts in statute law. They are:

1. Sutherland, *Statutes and Statutory Construction*. Three volumes. 3d ed. by Frank E. Horack, Jr. 1943.
2. Crawford, *The Construction of Statutes*. 1940.
3. Dwarris, "A General Treatise on Statutes . . . with American Notes and Additions. . . ." by Platt Potter. 1871.

c. On legislative process. There are a number of good books on the legislative process, both federal and state, which should be availin most public libraries. This subject is more than adequately covered by the books listed in 1 above. Mention here will be made of only one such book, namely Bailey, *Congress Makes a Law, The Story Behind the Employment Act of 1946*. As the title implies, this book shows Congress in action by anchoring its processes to the story of a particular law. An excellent technique, well done.

In conclusion, let me say that no attempt has been made to be critical of these materials, for that would serve little use here. While some effort has been made to distinguish, the spirit of this note has been, these are the best materials available and use them we must, until something better comes along.

Tax Notes

■ Prepared by Committee on Publications, Section of Taxation, Harry K. Mansfield, Chairman.

Splitting a Corporate Business Between Stockholders

■ The stockholders of a corporation may sometimes find it desirable, and under certain circumstances even necessary, to divide up the business and carry on operations separately thereafter. Interestingly enough, most businessmen who are confronted with this problem do not realize that they may have to pay a tax for the privilege of splitting up the corporate business. Although the division of the corporation can be accomplished in several different ways, there is no completely tax-free method of making the split.

In order to evaluate the tax cost of various methods of dividing up a corporate business, let us consider the following hypothetical situation: Mr. Smith and Mr. Jones are equal stockholders of the *X* corporation which owns and operates two equally valuable garages, *A* and *B*. Smith and Jones have decided that they want to split up, with Smith taking garage *A* and Jones taking garage *B*.

One way of working out the division would be to have the *X* corporation redeem all the stock of Smith (or Jones) in exchange for the *A* garage. Since this would be a complete redemption of one stockholder's shares, and since he would no longer be interested in the affairs of the *X* corporation, the redemption could not be considered as equivalent to a taxable dividend. Treas. Reg. 111, Sec. 29.115-9. Smith would have a taxable capital gain to the extent that the fair market value of the *A* garage at the time of the redemption exceeds the basis of the stock which he turns in to the corporation for the garage. Also, thereafter Smith's basis for depreciation or for gain or loss with respect to the *A* garage would be the fair market value of the garage, even though it may have had a lower basis in the hands of the *X* corporation. Thus, any possible taxable capital gain to Smith on the redemption may be offset by increased depreciation deductions stemming from a higher basis for the garage.

Since only one of the stockholders may face an immediate tax bite under this method, there may be a practical problem in determining whether Smith or Jones is to be bought out.

Another approach would be to liquidate the *X* corporation so that Smith could wind up with the *A* garage and Jones with the *B* garage. Smith and Jones would each have a taxable capital gain to the extent that the fair market value of the garage he receives exceeds the basis of his stock. Each would take the fair market value of the garage he receives as his basis for that property even though the garages may have had a different basis in the corporation's hands.

This method is potentially more expensive than the first because it may give both Smith and Jones a capital gain.

Consideration of the redemption and liquidation procedures must take into account any possible good will which may attach to the corporate assets to be distributed. If there is good will, the taxable gain to the stockholders will be increased by the value of the good will, without giving the owners an opportunity to recover that increase through any higher depreciation basis, although they may ultimately recover it through a sale.

In addition to the methods discussed above, there have been some suggestions that the reorganization provisions may be used to effect a tax-free division of a corporation, especially since the spin-off provision (Section 112(b)(11)) was added to the Code by the 1951 Revenue Act.

However, there seems to be no way of carrying through a reorganization to reach the desired split-up of the corporation without running into at least a capital gains tax.

For example, suppose *X* corporation transfers the *A* garage to newly organized *Y* corporation in exchange for all of *Y*'s stock. The *X* corporation then distributes all of the *Y* shares equally to Smith and Jones. Even though that may be a tax-free spin-off of the *A* garage into a new corporation, Smith and Jones have not come any closer to their goal. They now each own half of both corporations *X* and *Y*. To finish the split-up, Smith would have to exchange his shares in *X* corporation for Jones's shares in *Y*. That, however, would be a taxable exchange of stock for stock (see Sec. 112 (b) (1)) with each stockholder realizing a capital gain measured by the difference between the basis for the stock which he gives up and the fair market value of the stock he would receive in exchange.

Furthermore, there is a strong probability that an exchange immediately following the spin-off will destroy the tax-free nature of the reorganization because there would be no continuity of interest for *both* stockholders in the reorganized businesses. Treas. Reg. 111, Sec. 29.112 (b) (11)-2; see also *Weicker* v. *Howbert*, 103 F.2d 105 (10th Cir., 1939). That would give the *X* corporation taxable capital gain on its transfer of the *A* garage to *Y* corporation to the extent that the fair market value of the garage exceeds its basis to the *X* corporation. Also, the distribution of the *Y* stock to Smith and Jones would be treated as a fully taxable ordinary dividend to the extent of available earnings and profits.

The reorganization provisions may be used to reach a result somewhat equivalent to a direct redemption from one stockholder in exchange for the property he wants. The *X* corporation forms the *Y* corporation to which it transfers the *A* garage, receiving in exchange all of *Y's* stock. The *X* corporation then redeems all of Smith's stock in exchange for turning over to him all of the *Y* stock. This approach uses a redemption to give Smith the stock of a corporation which owns the *A* garage he wants, rather than the garage itself. Smith would have a taxable gain to the extent that the value of the *Y* corporation stock (which is directly geared to the fair market value of the *A* garage which it owns) exceeds the basis of the *X* corporation stock he turns in. But the *Y* corporation's depreciation basis for the *A* garage would be the same as it was for the *X* corporation, even though the fair market value of the garage is higher.

Unfortunately, this reorganization method is subject to the same infirmity as the previous one and may also fail to qualify as tax-free because of the change in ownership when the deal is finally completed.

Where the parties want a complete separation of interests, the safest approach is to steer clear of the reorganization provisions in favor of a complete redemption or liquidation. This will assure the owners of paying no more than a capital gains tax. Also, they may get a stepped-up basis for their property which can, through depreciation deductions, increased inventory basis, etc., *more* than offset the capital gains tax. Furthermore, the stockholder whose shares are redeemed (or all stockholders if the liquidation procedure is used) will have a free hand in capitalizing any new corporation he may want to organize for operating his business.

If the stockholders do not require an absolute split-up of the business and are willing to settle for a division of control, there may be a completely tax-free solution.

Using our original illustration, *X* corporation would transfer the *A* garage to a newly organized *Y* corporation in exchange for all of the *Y* stock, and the *B* garage to a newly formed *Z* corporation in exchange for all the *Z* stock. The *X* corporation would then distribute 51 per cent of the *Y* stock and 49 per cent of the *Z* stock to Smith, and 49 per cent of the *Y* stock and 51 per cent of the *Z* stock to Jones. In exchange, Smith and Jones would return all of their old stock to the *X* corporation which would go out of existence. Smith and Jones each would, for all practical purposes, have control of the properties each wants, through ownership of controlling interests, and they will not have paid any tax in reaching that result.

This method depends, of course, on having the reorganization qualify as tax-free under Section 112 (g)(1). Assuming that the need for splitting control supplies a satisfactory business purpose, the plan provides the necessary continuity of interest and control by both stockholders Smith and Jones in the new corporations. The key question then is whether a shift from equal ownership of both garages to separate control over each garage will destroy the tax-free nature of the reorganization. Although there are no recent decisions or published rulings specifically on point, two older cases, including one in which the Commissioner acquiesced (*Roosevelt Investment Corp.*, 45 B.T.A. 440 (acq.) (1941); *Weicker* v. *Howbert*, 103 F.2d 105 (10th Cir., 1939)), would apparently support the conclusion that the reorganization is tax-free despite the shift of control.

However, the same result may be reached by another technique which may stand an even better chance of approval. The stock of *Y* and *Z* corporations would be distributed equally to Smith and Jones. Then Smith would give one share of *Z* corporation to Jones in exchange for one share of *Y* corporation, thereby dividing control of the corporations. Any gain on the exchange of shares would be taxable to Smith and to Jones, but the cost would be held to a minimum because only one share of each corporation is exchanged. Whether this procedure is more favorable turns on whether the separate steps of the corporate split-up and the exchange of the single shares of stock will be combined under the "single scheme" doctrine into the equivalent of a 51%-49%, 49%-51% distribution. Unfortunately, there is no direct authority on this point, but there is reason to believe that the Bureau

may be sympathetic to the view that the "single scheme" doctrine should not apply in this situation.

If either of these methods of splitting control is used, the parties must not contemplate as part of the plan that they will exchange their minority interests in the new corporations. Apart from the fact that such an exchange could result in taxable capital gain to them, it could be considered as part of a single scheme for complete separation of ownership, and this would tend to destroy the tax-free character of the entire reorganization plan.

Contributed by Committee Member Leon Gold

OUR YOUNGER LAWYERS

C. Baxter Jones, Jr., Secretary and Editor-in-Charge, Atlanta, Georgia

■ This article is the second of several dealing with the history and achievements of various Junior Bar Sections throughout the country which have consistently stood high in the annual judging of applications for awards of merit. Each of these articles is written by a key officer of the state junior bar, at the request of the Secretary of the Junior Bar Conference. The article in the May issue was written by Thomas H. Law, of the Ft. Worth, Texas, Bar.

by Morgan P. Ames of the Connecticut Bar

■ The request of the Secretary of the Junior Bar Conference for an article on the organization and activities of the Connecticut Junior Bar "in view of the high place that it has consistently held in the competition for the Awards of Merit" comes as high praise for the younger lawyers of the Nutmeg State. Their organization, founded some thirteen years after the Junior Bar Conference itself was established, only recently celebrated its fifth birthday.

Its origins were similar to those of the Junior Bar Conference itself: Young lawyers (including Richard H. Bowerman, currently Chairman of our Conference), just back from the wars, felt that substantial quantities of younger blood should be injected into the body of the Connecticut State Bar Association so as to reinvigorate it, and, conversely, so as to give the juniors at the Bar the opportunity to try their own hand.

Accordingly, a petition for the establishment of a Junior Bar Section was presented to the state bar association at its annual meeting on October 21, 1947. The petition was approved, effective upon the approval of the By-Laws of the Section by the Executive Committee of the Bar Association. The By-Laws (set forth at 22 *Conn. B.J.* 191 (1948)) were approved November 17, 1947. The petitioners for the formation of the Section met, elected officers and an Executive Committee, and commenced activity.

Progress came hard. The usual laments about a house divided were heard from various quarters in the bar association. Nor did even the younger lawyers rally 'round: At the first annual meeting of the Section, only sixteen were in attendance.

Nevertheless, despite growing pains, progress was made under Mr. Bowerman's chairmanship, and in June of 1948 the Connecticut Junior Bar was granted affiliation with the Junior Bar Conference.

Since then, the activities of the Section have gradually increased.

Organization—The Section is governed by an Executive Committee, consisting of the Chairman, Secretary and Treasurer, the chairmen of the various committees, the chairmen of the local units in each major city, and a representative of the Council of the State Bar Association. The Executive Committee considers and decides all questions concerning policy and program, and implements its decisions through the chairmen of the various committees and of the various local units. The Executive Committee holds six dinner meetings throughout the year, in New Haven. In addition, an annual meeting of the entire Section is held at the time of the annual convention of the State Bar Association.

Membership—One of the most successful projects has been the program of luncheons for new lawyers following the swearing-in ceremony. At the luncheons, which are financed by the State Bar Association, the new members of the Bar are introduced to the judges and clerks of the federal and state courts and to the officers of the bar association and of the Junior Bar Section. Short addresses of welcome are given by the Chief Justice of the Supreme Court of Errors, the President of the Bar Association, and the Chairman of the Junior Bar Section.

Panel discussions have been presented at the luncheons on the opportunities and advantages of the various types of legal practice: individual practice, practice in a firm, employment in a corporate legal department, and so on. The film "Trial by Jury" has been shown. A pamphlet, prepared by the Junior Bar and entitled "Handy Hints to Newly-Admitted Connecticut Lawyers", is distributed. The pamphlet is soon to be printed as a public service by the Boston Law Book Company. Also, a brochure on the history, organization and activities of the Section, and an American Bar Association pamphlet, "Getting Started", are distributed to the new members of the Bar. Each new lawyer is given a sample copy of the *Connecticut Bar Journal* and an "Activity Application Blank" so that he may indicate his preference for participation in work in the organized Bar.

The results of this proselyting have been most successful: invariably the great majority of the new group have joined the Association.

A follow-up is made to remind the neophytes of the benefits to be derived from participation in the Bar Association program.

Practice and Procedure—The principal activity of the Section during

the first year of its existence was performed by its Committee on Practice and Procedure. The Committee prepared a report on the system of selecting jurors in Connecticut, which was published in 22 *Conn. B.J.* 316 (1948). Thereafter, as indicated at 23 *Conn. B.J.* 467 (1949), legislation was enacted putting into effect the recommendations made in this report.

Today, practice and procedure still constitute a principal field of activity.

The Section strongly feels that no greater obligation rests upon the Bench and Bar than to clear up the two- to three-year backlog of litigation in our state courts so that the public may enjoy its right to a speedy disposition of disputes brought into court. Of course, also, this congestion of the dockets also effectively prevents a young attorney from acquiring trial experience and developing a trial practice.

In 1951-52 this Committee prepared a questionnaire about this most pressing problem of the congested dockets in our state courts. The report of the Committee, entitled "The Perennial Problem of the Crowded Docket", which appeared in 26 *Conn. B.J.* 327 (1952), set forth the finding of the survey, recommended the adoption of federal civil procedure, and reported on steps taken in other jurisdictions (notably New Jersey) to reduce the congestion to manageable proportions. This report received the full consideration of the Rules of Practice Committee of the judges of the Superior Court and wide attention throughout the Bar.

In 1951-52, the author, as Chairman of the Section, made efforts to call again to the attention of Bench and Bar the advisability of rule-making by the judiciary rather than by the legislature. See 26 *Conn. B.J.* 350 (1952).

This year, as Chairman of this Committee, the author prepared an article entitled "Progressive Judicial Rule-Making in Connecticut: An Urgency", which has been distributed to the Connecticut Bench and Bar, as well as to the American Bar Association. This article is in support of S.B. 238, entitled: "An Act Concerning Rules of Pleading, Practice and Procedure, and Confirming in the Judges of the Supreme Court of Errors the Power to Prescribe Such Rules for All Courts". The bill, drafted by this Committee, and introduced in the current session of the General Assembly, would provide that the judiciary enjoy full rule-making power and that all statutory rules of procedure (of which there are almost 800!) be deemed merely rules of court, subject to revision or repeal by the judiciary.

The bill has had the full support of the bar association, of judges of the Connecticut courts, and of leaders in the field of procedural reform.

Despite opposition from several quarters still imbued with the notion of the omnicompetence of the legislature (a notion thoroughly discredited by Dean Pound, "Rules of Court in New Jersey", 66 *Harv. L.R.* 29 (1952)), it seems that the bill, or at least a substitute measure, will be passed during the current session of the legislature, so that Connecticut may join the ever-growing number of states in which control of procedural rules has reverted to its proper repository, the judiciary. When that is accomplished, there will be an attempt to persuade the judiciary, in the exercise of its new power, to adopt rules modeled on the federal rules.

Finally, this Committee has pointed out that the vast backlog of pending negligence actions necessarily delays the decision of all other cases on the calendar, including important contract matters of the commercial world. Obviously, the continuing inability of the courts to cope with the volume of negligence litigation operates, unfairly, to drive the business communty into other forums, such as arbitration, for the prompt disposition of its disputes. The Committee has suggested to the Rules Committee of the judges that one possible remedy for this inequitable and unwise situation is the establishment of separate tort and contract calendars, as in the New York Supreme Court.

Other loud, clear voices have been heard in Connecticut on the subject of making the courts more useful social instruments—witness Judge Baldwin's article, "How Can We Expedite the Business of the Courts?" 27 *Conn. B.J.* 1 (1953), and the legislative effort led by the State Bar Association and the Judicial Council to reorganize our state courts, reported at 26 *Conn. B.J.* 373, 382 (1952).

Meanwhile, in matters of procedural reform, Connecticut's dilatory pace is put to shame by the energetic advances of New Jersey, of sister states of the West and Southwest, and even more impressively, Puerto Rico (see Clark and Rogers, "New Judiciary Act of Puerto Rico", 61 *Yale L.J.* 1147 (1952).)

Continuing Legal Education—A recent survey of the nation's law schools reported that their graduates are inadequately prepared in the practical skills required in the present-day practice of law. *New York Times,* April 11, 1953, page 32, column 1. As we all know, the law schools cannot hope in three years to teach their students all they will need to know in practice.

To help remedy this situation, the principal endeavor of the Committee on Continuing Legal Education has been to hold a three-week seminar in Connecticut practice each summer for the benefit of younger attorneys. The seminar concerns all the practical phases of legal practice that a new member of the Bar will face. The instruction is provided by leading practitioners. The instructional material comprises mimeographed forms of pleadings and other legal documents, prepared by the Committee.

Additionally, the Section has held at regular intervals institutes on medicolegal problems, on the legal problems of small businesses, and on federal practice. Most recently, at its Mid-Winter Meeting on March 30, the Section presented jointly with the Connecticut Life Insurance and Trust Council, a skit on the

disastrous consequences of laymen's homemade wills.

Finally, what amounts to post-graduate legal education has been provided by means of lectures at the monthly luncheon or dinner meeting of each of the local units. These lectures are delivered by judges, clerks of courts, attorneys, insurance men, probation officers, coroners, attorneys general, and others with whom attorneys come into regular contact.

Traffic Courts—On June 2-3, 1952, in New Haven, in conjunction with various other state organizations and Messrs. Economos and Donigan of the American Bar Association, the Section sponsored the First State-Wide Judicial and Law Enforcement Conference, on Traffic Laws, for the benefit of Connecticut attorneys, judges, prosecutors, insurance men, and police officials. It was outstandingly successful and will be repeated this year.

Also, a "Bill of Rights" is being prepared to be issued to persons coming before the traffic courts.

Citizenship— W are, of course, all aware of our great responsibilities to the legal profession, the courts, and the public to mold public opinion toward the highest respect for the law and its processes.

Our Citizenship Committee has attacked the problem principally on a high-school level, stressing the publication of a pamphlet on law and lawyers for use both by prospective jurors and high-school students; talks before high-school groups on the nature of law and the role of the attorney in our society; visits to court by groups of high-school students; and, in conjunction with the State Bar Association, a high-school essay contest on the subject, "The Menace of Communism to a Free World."

Other Activities—We are also engaged in a public information project, including speaking engagements and radio-TV programs on subjects related to law and lawyers. We maintain liaison with the law school of Yale University (where we have helped establish the Yale Bar) and with the University of Connecticut Law School. We are active in the field of legal aid and in preparation and distribution of information on placement opportunities. Finally, our Legislation Committee is preparing a pamphlet on legislation enacted by the current session of the General Assembly.

Conclusion—Article II of the Section's By-Laws states that its objects are to stimulate the interest of young lawyers in the work of the state bar association, and to provide them with a more effective means to participate in activities directed toward improving the administration of justice and promoting the general welfare. We trust that at least to some fair degree we are achieving that purpose.

BAR ACTIVITIES

Paul B. DeWitt · Editor-in-Charge

■ The Committee on Public Relations of the Erie County Bar Association has recently completed a highly successful public service television program on Station WBEN-TV, Buffalo. The series consists of ten programs dealing with common legal problems such as "Jury System", "Purchase of a Small Business", "Wills", "Civil Rights", "Buying a House", "Fair Trial", "Divorce and Separation", "Landlord and Tenant", "Installment Purchases", and "Defense of the Accused".

The programs are divided into two parts: (a) fifteen minutes devoted to a dramatic skit depicting the current problem; (b) a general discussion to answer questions raised by the skit and to cover other phases of the subject. The discussion panel has a moderator and consists of three members, usually lawyers, but often experts from other fields relating to the subject under discussion.

The scripts have been written in a vein which can be easily and clearly understood by the public.

Because of the favorable public reaction and because of numerous requests which have been received from other bar associations, the Erie County Bar Association is making the television scripts and panel discussions for the ten programs available for sale to other Associations. The scripts have been written so that they can be easily adapted to fit any community.

The complete set of ten scripts, plus the panel discussions, can be purchased for the nominal charge of $125.00. Further information can be had from Alice T. Scanlan, radio and television director for the Committee, at 291 Delaware Avenue, Buffalo 2, New York.

■ The Annual Meeting of the Wisconsin Bar Association in June was centered around the observance of the Centennial of the Wisconsin Supreme Court. A special Centennial Committee, with former Chief Justice Marvin B. Rosenberry as Honorary Chairman and Ralph Hoyt as Chairman, prepared and distributed to Wisconsin high school students a brochure on the history of the court.

■ Bethuel M. Webster was re-elected President of The Association of the Bar of the City of New York at its Annual Meeting in May. Other officers elected were: F. W. H. Adams, Sinclair Hatch, Allen T. Klots, John B. Marsh and Benjamin A. Matthews, Vice Presidents; William E. Jackson, Secretary; and George A. Spiegelberg, Treasurer.

At the meeting, John W. Davis presented Honorary Memberships

in the Association to Chief Judge Thomas W. Swan and Judge Augustus N. Hand of the United States Court of Appeals for the Second Circuit.

A report on the protection of American investments abroad, submitted by the Committees on Foreign Law, Dudley B. Bonsal, Chairman, and International Law, Dana C. Backus, Chairman, was presented and approved.

■ The American Arbitration Association has announced that a suit for an injunction against the Association brought in Nebraska under a resolution of the Nebraska State Bar Association was dismissed. This action charged the Association with usurping judicial power and jurisdiction of courts in Nebraska, and of unlawfully practicing law. Dean Roscoe Pound, in commenting on the dismissal of the action, said, "Certainly the Association is not in any way usurping the powers of the courts nor practicing law. As to usurpation of judicial power, there was at one time some jealousy of agreements to arbitrate whether agreements to submit the existing dispute (the so-called submission agreement), or an agreement to arbitrate a future dispute arising out of a contract (the so-called arbitration clause). It was considered that such agreements tended to oust the courts from their jurisdiction, but long ago this attitude was given up. Indeed, as one court has put it, the resulting rules had an unworthy genesis and stood rather upon antiquity than upon excellence or reason. Forty-six states including Nebraska now have statutes giving full effect to arbitration agreements. Indeed, the statute in Nebraska provides that any two citizens may agree to submit a dispute to any other third person for final determination, and that an agreement so to do after a dispute has arisen is legal and binding and will be enforced by the courts. It is therefore an anachronism in Nebraska to speak of arbitration as ousting the jurisdiction of the courts.

"Nor is there any more reason for charging that the American Arbitration Association is practicing law. There are three types of lawyer, the agent for litigation (attorney), the advocate, and the legal adviser or counsellor. The Association in no way performs any of these functions or does anything which can fairly be referred to them by analogy. What it does is to provide lists of business and professional men, many of them leaders of the Bar in their communities, who stand ready to serve as arbitrators when voluntarily selected by the parties to disputes, and to provide facilities for arbitration. . . .

"The American Arbitration Association since its inception has had the full co-operation of bar associations throughout the country. Lawyers have realized that arbitration offers another field in which they may be active and render service to their clients. The report of The Association of the Bar of the City of New York, where arbitration has made the greatest progress, shows that in over 90 per cent of the cases in which recourse is had to facilities provided by the American Arbitration Association lawyers represent clients and take part in the proceedings."

■ The Akron Bar Association has inaugurated a series of half-hour television programs. A panel of three lawyers is given fact situations taken from reported cases. The panel discusses the questions involved and renders a decision. The panel's decision is then compared with the actual decision of the court in the case discussed. Also on each program there is a "mystery guest" from a famous trial. The panel, by questioning, attempts to identify the case and the guest.

■ In May the New York State Bar Association dedicated its new headquarters building in Albany. The building was purchased by funds given to the Association by William Nelson Cromwell. Participating in the dedication ceremonies were Chief Judge Edmund H. Lewis of the Court of Appeals, Presiding Justice David W. Peck of the Appellate Division, First Department, Edward H. Green, Jackson A. Dykman, Franklin R. Brown, Weston Vernon, Jr., and Arthur VD. Chamberlain.

National Conference Group

(Continued from page 567)

being criticized, as, for instance, in violation of Canon 47, they are more apt to be listened to than if the bankers told him the same thing.

Our experience has been most gratifying in straightening our misunderstandings and remedying complaints. The American Bar Association, through the establishment of this Conference with the American Bankers Association-Trust Division, has been quietly rendering a valuable public service in a way which enures not only to the benefit of the public, but, also, the members of the legal profession.

The writer is under no delusion that we have arrived at Utopia in this field. There are still some places in the country where the thinking of both lawyers and bankers on this subject is behind the times. There are still many situations in small communities where the local banker is inclined to be unco-operative. Nevertheless, the record to date of the results of the steady work of this Conference demonstrates one way of obtaining really constructive results which it is to be hoped will be emulated in other fields where national conferences have been set up with like groups and where the line of demarcation between their necessary services and the practice of law is not always entirely clear.

Views of Our Readers

■ Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the *Journal* or otherwise within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves the selection of communications which it will publish and may reject because of length. The Board is not responsible for matters stated or views expressed in any communication.

Radical Change in English Practice

■ I trust you will find this letter of interest to your readers because, it refers to one of the most novel and radical changes that has been introduced into English practice and procedure in many decades. I refer to the change in the method of remunerating English solicitors. It does *not* apply to services in litigations. It is a complete face-about in respect of the system that has obtained so long, from *scale* to *quantum meruit*. All know that the barrister is paid, by agreement between his clerk and the solicitor. The barrister, by etiquette, is not permitted to take part in that negotiation, nor are the courts open to him to recover unpaid fees. On the other hand solicitors were anchored to and frequently ground-down by scale. We have all seen his detailed and frequently almost endless bills of petty items. Solicitors employ one or more costing clerks for this purpose. Obviously, that laborious and wasteful system was necessary, but it has now been found it no longer works, and the original reasons for its continuance have disappeared. A substantial part of a solicitor's income was augmented by making copies. A folio is counted at seventy-two words. I have just received an affidavit which bears the notation "Fos. 32". I have seen briefs (in the English sense) running into thousands of dollars, mainly padded with numerous copies of documents of very questionable materiality or value bulked into the brief.

The legislation "The Solicitors Remuneration Order 1953" and "The Solicitors' Remuneration (Registered Land) Order 1953", was laid down before Parliament on January 27th last, and came into operation on March 1st. An explanatory note follows the print of the legislation, from which I quote: "the replacement of the existing method of charging under Schedule 2 to the Solicitors Remuneration Order 1883 . . . by a system enabling a solicitor to charge such sum as may be fair and reasonable. . . ."

A dissatisfied client was entitled to apply to a taxing master for taxation of the solicitor's bill, and on such taxation the taxing master imposed costs of the taxation. The client can still request taxation. The whip in the hand of the taxing master is a provision that if he allows less than one half of the amount charged he shall bring the facts of the case to the attention of the Law Society. However, that's as far as the law provides for visitation.

The rule reads as follows:

> Such sum as may be fair and reasonable, having regard to all circumstances of the case and in particular to—
>
> (1) the complexity of the matter or the difficulty or novelty of the questions raised;
>
> (2) the skill, labour, specialized knowledge and responsibility involved on the part of the solicitor;
>
> (3) the number and importance of the documents prepared or perused without regard to length;
>
> (4) the place where and circumstances in which the business or any part thereof is transacted;
>
> (5) the time expended by the solicitor;
>
> (6) where money or property is involved, its amount or value; and
>
> (7) the importance of the matter to the client.

The explanatory note reads as follows:

> While the right to have the bill taxed is not affected, provision has been made for the client's obtaining from the Law Society a certificate stating that the sum charged is fair and reasonable or, if it is not, what is a fair and reasonable charge: the latter, if less than the sum charged, will in the absence of taxation, be the amount payable.

American lawyers will be interested in comparing that legislation with Canon 34.

BARNETT HOLLANDER
London, England

The Trials of Inventors

■ Early in the seventeenth century Galileo invented an astronomical telescope and, as a result thereof, was hailed before the Inquisition. He recanted and was excused. (A contemporary who did not recant went to the stake.)

At the outbreak of the French Revolution in 1789, Lavoisier was the foremost chemist of his age. He had done much towards the development of chemistry and was engaged in important experiments. At that time no one could finance such work without contact with the aristocracy. Consequently he was caught in the net of the French Revolutionists. At his trial it was stated that he was a great chemist, that his work was most important and that his improved manufacture of gunpowder had made possible the Republic's victories. The reply was: "The Republic has no need for learned men. Let Justice take its course." Delay was then asked that he might complete some important experiments on which he was working. The reply was: "The Republic needs no experiments." Lavoisier then went to the guillotine. It was said: "It took only a moment to cut off that head. It will take a hundred years to produce another like it."

In the early part of the twentieth century DeForest invented the audion, known to the user as "the vacuum tube". It is a device, long

sought for, which amplifies voice currents without smearing the overtones. It transmits and amplifies the voice currents with great fidelity. It is essential to, if not the basis of, long distance telephone, radio, radar, television, and many other sciences and industries.

In 1913 "a United States Marshal pounced" upon DeForest and "placed him under arrest".* He was charged with using the mails to defraud people in that he had tried to sell stock to finance his invention. At his trial the District Attorney held up the audion in front of the jury declaring that DeForest should be sent to the penitentiary for selling stock in "this worthless piece of glass".

The judges of the Inquisition, the French Revolutionary Tribunal, and the District Attorney in the DeForest trial are to be pitied rather than censured. Like so many others, they judged the important inventions of Galileo, Lavoisier and DeForest on the basis of their limited knowledge. To the District Attorney, for example, the audion was only what he saw, only what was on the outside, and that was to him, as he said "a worthless piece of glass". The judges of the Inquisition, the French Revolutionists and the District Attorney are to be pitied because they did not realize that they knew so little that the great inventions of Galileo, Lavoisier and DeForest were to them no more than "a worthless piece of glass".

While it is fortunate that Galileo escaped the stake and DeForest escaped the penitentiary, it is unfortunate that a great many inventors lose their rights because of people who, like the judges of the Inquisition and the District Attorney, are to be pitied rather than censured in that the destruction of such rights is predicated upon the inability of many people to see no more than the District Attorney in the DeForest trial saw in the audion; that is, that it is to his limited knowledge merely what he saw—"a worthless piece of glass".

We can take great pride in the progress that has been made. Galileo was threatened with the stake, Lavoisier with the guillotine, DeForest with the penitentiary. The modern-day inventor endures the lesser evil of harassment and bedevilment under the antitrust laws.

F. O. RICHEY

Cleveland, Ohio

Opposed to "Tinkering" with the Constitution

■ As a member of the American Bar Association, I am amazed, amused, annoyed, and alarmed by the amount of support being received by the proposal to change the "supreme law of the land" clause (Article VI, paragraph 2) of the United States Constitution. I feel that the Constitution is being betrayed in the house of its friends. Hitherto a large part of our proceedings has been devoted to eulogies of the Constitution. Are we now to reverse our beliefs, and proclaim that there are defects in the Constitution, and join forces with those who find it an unsatisfactory instrument of government?

I am opposed to tinkering with the Constitution. It should remain an object of reverence for our citizens. It has been loaded down with too many unnecessary amendments already. We should avoid adding another.

The particular provision of the Constitution which is being attacked is one that was adopted *unanimously* by the Founding Fathers. Experience had demonstrated the necessity of federal power to ensure compliance by the states with treaties entered into by authority of the United States. Thomas Jefferson and James Madison believed that as a matter of law, *even under the Articles of Confederation*, treaties were binding on the individual states. But everyone agreed that an explicit declaration to that effect was necessary and desirable and should be included in the Constitution. The Continental Congress had adopted resolutions calling upon the states to repeal any state laws which conflicted with national treaty obligations. Of a proposal in the Constitutional Convention to give the Federal Government a general negative or veto on *all* state laws, Jefferson wrote from Paris to Madison that: "It fails in an essential character, that the hole and the patch should be commensurate". So the present provision was adopted, making treaties part of "the supreme law of the land". It was this very provision of the Constitution which gave rise to judicial review as a method of enforcing these obligations, as Jefferson had suggested.

Rather than regarding it as a defect, should we not take pride in the fact that the United States shows such high regard for its pledged faith that it gives our international promises the force of internal law? And is not judicial review one of our cherished institutions?

I see no reason why the United States should not have power to make treaties on any legitimate subject of international concern, and have power to enforce such obligations by congressional legislation. In other words, existing law (including the "migratory bird" case, 252 U.S. 416) is satisfactory.

If there really were a serious problem in connection with treaties, a simple solution is at hand, without amending the Constitution. Just include a "non-self-executing" clause in every treaty. The State Department and Senate, if necessary, could make it a standing rule not to approve any treaty without such a clause.

Even such a rule would be more than is needed. The real remedy, of course, is simply the exercise of wisdom and firmness by the State Department and Senate in dealing with individual treaties on their merits.

What has just been said applies especially to the "genocide" and "human rights" treaties, opposition to which is at the root of the present dither about treaties. I should be sorry to see those treaties defeated at the price of an amendment to the Constitution in a feature which the Founding Fathers rightly considered vital to the welfare of the nation.

EDWARD DUMBAULD

Uniontown, Pennsylvania

Codes and the Rain of Law

(Continued from page 577)

Caecilia Didia forbade the inclusion of unconnected measures in a single bill much as modern constitutions require an act to relate to a single subject.

Moratoria from legislation have also been suggested as a remedy—enforced vacations for lawmakers. But obviously this is impossible. Nor can we address to our legislators the words of a royal governor of Virginia who shortly after 1710 dissolved the House of Burgesses. "To be plain with you, the true interest of your country is not what you have troubled your heads about. All your proceedings have been calculated to answer the notions of the ignorant populace; and if you can excuse yourselves to them, you matter not how you stand before God, or any others. . . . I cannot but attribute these miscarriages to the people's choice of a set of representatives whom Heaven has not endowed . . . with the ordinary qualifications requisite to legislators; and therefore I dissolve you."

The answer, or attempted answer, has been found not in dissolution or invective but in codes. There was the earliest datable code, the Athenian code of Draco in 621 B.C. In the fifth century B.C. Euripides referred to the advantages derived by the Greeks from codes replacing unwritten customary laws:

> But when the laws are written,
> then the weak
> And wealthy have but equal rights.

In Rome the Twelve Tables of about 450 B.C. were basic. Julius Caesar proposed to codify the whole mass of customary civil law and to publish the most useful parts in compendious form. But Brutus and the envious Casca's knife prevented fruition of his plan. In the time of Hadrian, Julian as praetor published the first code of practice in any system, the Perpetual Edict. The Law of Citations of Valentinian III, A.D. 426, in effect was "a clumsy attempt at codifying the whole law." Only five jurists might be cited: Gaius, Papinian, Paul, Ulpian and Modestinus. It was Justinian, of course, whose code commission appointed in 528 laid the foundation for centuries of European laws and the modern codes. The reduction of an enormous legal literature to one a twentieth of its size in number of lines is classic. As Gibbon wrote: "The victories of Justinian have crumbled into dust, but the name of the legislator is inscribed on a fair and everlasting monument." Nearly a thousand years later Dante "reserved a special place in paradise for the Byzantine Caesar"

> Who by the will of Primal Love
> possessed
> Pruned from the laws the unheeded
> and the vain.

As to English law we may say with Maitland, referring to the ninety brief sentences of the laws of Aethelbert, "our legal history starts with an act of codification." Milton wrote Cromwell that "laws are usually worse in proportion as they are more numerous". That dictator's convention set a committee, without a lawyer upon it, to the work of reducing the formless mass of statute and precedent "into the bigness of a pocket book".

In France about 1300, Pierre du Bois was of Langland's opinion that "Lawe is so lordeliche and loth to make end" would reduce everything to a simple code, able to be consulted with ease. So Voltaire cried out that the whole law be clear, uniform and precise. For him, as for others dreaming down the ages, such law would need no interpreter, would be clear to every man. The first act of Napoleon's dictatorship, the very first night after the *coup d'état,* was to appoint two commissions to draft a legal code. The Code Napoleon was to cast into shade, and as in Justinian's case, be far more durable than his victories. As H.A.L. Fisher has written, no "great modern community of men received so much from a single mind".

And so we come to Bentham who would have a code so that "On that one book any man may lay his hand and say, 'Within this cover is the sole basis of my rights, the sole standard of my duties. Duties and rights together, here I shall be sure to find them: elsewhere I have no need to look for them! . . . A man need but open the book in order to inform himself what the aspect borne by the law bears to every imaginable act that can come within the possible sphere of human agency . . . the vast and hitherto shapeless expanse of Jurisprudence is collected and condensed into a compact sphere which the eye at a moment's warning can traverse in all imaginable directions."

Bentham with an optimism "immense and undisturbed", declared himself ready, indeed eager, to provide complete codes for Spain, for Russia or for Morocco. He asked President Madison to authorize him to provide a code of law for the use of the United States. He even made a formal public offer to construct a perfect code for any people.

In America there were early demands for codification. In 1784 it was said that Americans should burn the "vast load of legal lumber" just as Voltaire had proposed a similar bonfire. As Pond, in *The Formative Era,* pointed out, Bentham's writings attracted wide attention, The French Civil Code had fascinated many. Had the common law in the United States "lost its unity the movement for a premature Benthamite code might well have swept the country as the French codes swept over Europe". American legislators might well have believed with Emerson that "To men legislating for the vast area betwixt the two oceans, betwixt the snows and the tropics, somewhat of the gravity and grandeur of nature will infuse itself into the code."

And here we leave codes and the rain of law merely with the remark that we have searched the indexes of our own state code and U.S.C.A. in vain for either "gravity" or "grandeur". But we do not disparage the efforts of our brothers at the Bar traveling in the footsteps of Justinian and Napoleon.

Activities of Sections and Committees

SECTION OF ADMINISTRATIVE LAW

■ Following a communication to him from Chief Justice Fred M. Vinson, President Eisenhower has called into conference the executive departments and administrative agencies of the United States Government for the purpose of studying co-operatively the problems of "unnecessary delay, expense and volume of records in some adjudicatory and rule-making proceedings". The President's announcement was made public on April 29, 1953.

The proposal to call a conference grew out of the recommendations to the Judicial Conference of the United States by a Committee of the Conference headed by Circuit Judge E. Barrett Prettyman, of the District of Columbia Circuit. It has been actively supported by the Section of Administrative Law. In addition, a resolution was adopted by the House of Delegates of the American Bar Association favoring the proposal. It has the endorsement of the Attorney General of the United States as well. In his announcement the President stated that the conference

> affords opportunity for a public service of benefit to both citizens and Government. Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described.
>
> It is not contemplated that the conference will attempt to impose rules or procedures upon the departments, the agencies, or litigants. The purpose is to exchange information, experience and suggestions and so to evolve by cooperative effort principles which may be applied and steps which may be taken severally by the departments and agencies toward the end that the administrative process may be improved to the benefit of all.
>
> I request the Attorney General to cause a list to be prepared of those departments and administrative agencies which have these functions, and to transmit to each of those listed a copy of this call. I also request him to designate, in addition to a delegate, a representative of his Department to act as Secretary of the conference.
>
> I request each department and agency receiving this call from the Attorney General to designate a representative to meet with other such representatives as delegates in a conference for the purposes I have designated. I request that in designating representatives for these purposes care be taken to name persons who will undertake to devote to the work the considerable time which probably will be required.
>
> With the agreement of the Chief Justice, I have invited Circuit Judge E. Barrett Prettyman, of the United States Court of Appeals for the District of Columbia, Judge Morris A. Soper of the United States Court of Appeals for the Fourth Circuit, Baltimore, and Associate Judge Walter M. Bastian of the District Court of the United States for the District of Columbia, to participate in the conference, and have requested Judge Prettyman to act as Chairman.

The work of the Conference will be watched with much interest by members of the Section of Administrative Law.

SECTION OF JUDICIAL ADMINISTRATION

■ The American Bar Association may well take pride, among its other outstanding achievements, in having inspired the formation of the Conference of Chief Justices of the highest courts of each of the forty-eight states. This conference, initiated in fact by the Section of Judicial Administration, held its first sessions concurrently with those of the Annual Meeting of the American Bar Association at St. Louis in September, 1949. The organization, in which is concentered the judicial thinking throughout the United States on the state level, has been actively at work ever since, with the aid of its secretariat, the Council of State Governments, in considering constructive improvements in judicial administration.

At its last conference, held concurrently with the American Bar Association's San Francisco meeting, the major topic of discussion was the host of habeas corpus applications being made to the federal courts by persons whose conviction of crime in the state courts has been affirmed by the highest state courts. This problem has seriously troubled not only the state courts but the federal courts as well. The Conference of Chief Justices accordingly embarked upon a careful study of this problem from all angles, on which it is now engaged, to the end not only of eliminating any possible defects in state procedure but also of co-operating with the federal judiciary in dealing with this common problem.

Other matters under consideration by the Conference of Chief Justices this year include the courts and indigent criminal defendants, as to which Judge Richard Hartshorne, former chairman of the Section of Judicial Administration, addressed the Conference at its last session.

Chief Justice J. E. Hickman of the Supreme Court of Texas is chairman of the Conference of Chief Justices this year, and Chief Justice Arthur T. Vanderbilt of the Supreme Court of New Jersey is vice chairman.

SECTION OF MINERAL LAW

■ A case that will be of interest to the Section of Mineral Law and especially those lawyers directly inter-

ested in oil and gas, was decided on January 21, 1953, in the Supreme Court of Texas, entitled *Board* v. *Colorado River District*, 254 S. W. 2d 369.

Robert E. Hardwicke, of Fort Worth, Texas, has this to say about this decision:

> The statute that was under consideration in that case, with respect to court review of an administrative order, provided in part as follows:
> . . . the trial shall be de novo, and the court shall determine independently all issues of fact and of law with respect to the validity and reasonableness of the law, rules, regulations or orders or acts of the Board complained of. . . .
>
> This is what the court held:
>
> In effect that is itself a statement of the substantial evidence rule. Under that rule the court makes an independent determination from the evidence adduced at the trial of whether the administrative order is reasonably supported by substantial evidence. The statute provides that the court shall determine the reasonableness of the order. If an order is reasonably supported by substantial evidence it is reasonable; otherwise it is unreasonable.

"There are many cases, including several by the Supreme Court of the United States, to the effect that the substantial evidence rule is not applicable where the trial court is required to make an independant determination of issues of fact as well as of law. Indeed, good lawyers have thought that the way to prevent a court from applying the substantial evidence rule is to require the court to make independent determination of the issues of fact for the purpose of deciding whether an administrative order is valid."

COMMITTEE ON FACILITIES OF THE LAW LIBRARY OF CONGRESS

■ The Law Library of Congress is the largest legal library in the world, consisting of over one million volumes of almost all known systems of law, both ancient and modern. It contains more than 300,000 volumes of foreign law.

The Library is constantly used by the Congress, all departments of the government, and the federal courts, and it should be of interest to the Bar to know that it is available to every lawyer in the United States.

If a lawyer in Seattle has a legal problem on which he wants the type of assistance that can be furnished by the greatest library in the world, he can turn to the Law Library of Congress for legal information and request a library in his locality to borrow for him any material that is not locally available. More and more lawyers throughout the country are finding it necessary to acquaint themselves with the laws of other lands, and in many cases the only library that has the laws, decisions and legal treatises on these questions is the Law Library of Congress.

The Library has collected a second set of briefs in cases before the Supreme Court of the United States for the years 1931 to 1939 and 1944 to 1948, which is available on interlibrary loan on the same terms as other law books.

Our Committee has recently requested all Sections and Committees of the American Bar Association to furnish the Law Library with copies of manuscripts, addresses, research material and reports to enable the Law Library to better serve the needs of our profession. I should like, through the medium of the JOURNAL, to renew this request. The personnel of Sections and Committees change from time to time, and I hope the chairmen of the various Sections and Committees will so arrange it that this material will continue to flow to the Law Library even though their personnel may change.

COMMITTEE ON UNAUTHORIZED PRACTICE OF THE LAW

■ This committee calls attention to a case of considerable interest to members of the Bar from the standpoint of unauthorized practice of the law. The suit is pending in the Pulaski Chancery Court of Arkansas and was instituted by the Bar Association of Arkansas to enjoin and restrain the Union National Bank of Little Rock from practicing law, it being alleged generally that the defendant corporation is engaged in the practice of law through salaried employees in the Probate and Chancery Court of Pulaski County as well as in the probate courts of other counties in the state. It is alleged that the defendant instituted and presented probate proceedings through its trust officers and regular employees for the probate of wills where it had been nominated as executor, and that it had followed such proceedings through to final settlement; and that it had filed and prosecuted proceedings to secure its appointment as administrator and as guardian, carrying such proceedings through to final settlement.

Among other things the allegations cover the preparation, filing and presenting of various petitions, orders and instruments for the administration of estates, the filing of applications for letters testamentary and of administration, the probating of wills, filing of inventories, preparation of renunciations, waivers and resignations, preparation of forms for election to take by statute, determination of heirship, publishing of legal notices, collecting of assets, conducting of court proceedings for sale of property, passing on validity of claims, construing laws of descent, etc. A number of other items are mentioned and generally it is alleged that the defendant had conducted and done all things necessary to a full and complete administration of estates in addition to drafting conveyances, wills, leases, contracts and various forms of trust agreements.

The defendant admitted that it had done all of the acts alleged in the complaint with the exception of the drafting of wills and the possible exception of the preparation of forms of election to take under statute instead of by will, but it is contended that all the activities of the defendant have been determined to be for the best interests of the estate by the officers of the defendant and that it was therefore the bank's business rather than the representation of the

beneficiaries or *cestuis que trustent*.

The Bar Association of Arkansas contends that in handling probate matters the bank is performing functions that are commonly conducted by those who are licensed to practice law; that there is no plainer method of practicing law than to invoke the jurisdiction and aid of a court of record, seeking therein the authorization and adjudication of petitions and orders, and the fact that in this case the court of record happens to be the Probate Court does not alter the character of the activity, nor does the fact that corporations are legally capacitated to become executors or administrators confer upon them the right to practice law in the Probate Court.

The outcome of this case will be watched with interest by the entire Bar.

COMMITTEE ON PUBLIC RELATIONS

■ Present indications are that the Diamond Jubilee meeting at Boston August 23-28 will be the "best covered" in the history of the American Bar Association.

Preliminary contacts have been made with the eight daily newspapers in Boston, as well as with the major press association and news magazine bureaus located there. It is expected that most of them will assign staff writers to cover some or all of the sessions.

A spacious and well-equipped press room will be established in the Statler Hotel, at the scene of principal activities and on the same floor as the House of Delegates assembly hall. Arrangements are being made to co-operate fully with the press, radio and television with a view to obtaining the widest possible coverage of the annual meeting events.

The press room will be under the charge of Don Hyndman, executive assistant to the Public Relations Committee. He will be assisted by John Gleason, head of the department of journalism at Boston University, who has been engaged by the Boston committee to assist in advance publicity for the meeting.

Two Boston television stations have national network affiliations, and efforts are being made to utilize this medium to publicize one or more of the major events.

While every effort will be made to publicize Section and Committee meetings which produce newsworthy developments, the press room staff will not be able to cover all these meetings. Section and Committee chairmen will be urged by the Public Relations Committee to designate their own "reporters" to prepare and bring promptly to the press room for editing and distribution to the press the results of meetings deemed sufficient to warrant a press release.

Recent regional meetings of the American Bar Association in Omaha and Richmond demonstrated again the added publicity value that accrues from these sessions. An account of the Omaha sessions appears elsewhere in this issue.

The publicity received by the Richmond meeting was so outstanding as to be generally acclaimed the best ever accorded a bar gathering of this type. Every day, one or more stories on the Richmond sessions appeared on page 1 of the Richmond papers—usually with pictures. Several interviews and feature stories were arranged in addition to the straight news coverage. The unusual press co-operation also extended to the press services which carried stories on their regional and national wires. All this reflected careful planning and preparation on the part of an active publicity committee headed by Hugh R. Thompson, Jr., Richmond lawyer and former newspaperman. Mr. Thompson devoted much time and effort to the whole publicity enterprise and was rewarded with exceptional results.

Edmund Pendleton

(Continued from page 547)

the law expounded by lawyers who saw every point and exhausted every argument.[32] Counsel were given full opportunity to be heard and all the judges listened, for it became the practice for each judge to prepare his own opinion as though justice depended upon him alone. It was not, as it is today in many appellate courts, a matter of limiting counsel to so many minutes, then leaving to one judge the brunt of the case. And he was generous in his praise for those who acquitted themselves well, as when he said of counsel, in an involved will case, that his "laborious researches on such occasions are pleasing to the court, as they generally impress an opinion, that what is not produced by him in favor of the side he advocates, does not exist"—a compliment well worth treasuring even though the man who earned it lost the case.[33] None knew better than he that, though the law is a science, its application is an art; and surely those about him knew that it was he who was the consummate artist, and that when he was gone no

32. The best of Vriginia's youth knocked at the door of her courts, for the Bar was "the road to honor". One of these was John Marshall, whose method has been described as follows: "In a bad cause his art consists in laying his premises so remotely from the point directly in debate, or else in terms so general and so specious, that the hearer, seeing no consequence which can be drawn from them, was just as willing to admit them as not; but his premises once admitted the demonstration, however distant, followed as certainly, as cogently, as inevitably, as any demonstration in Euclid.

33. Like all good judges, he favored settlements, and once said of a case, "It is to be lamented that the parties had not settled it, when no loss to either would have happened; but like many others, they got angry and went to law, and must abide by the consequence."

one could so grace the ermine he had worn.[34]

The only thorn in his side was his continuing rivalry with his former colleague, George Wythe, who had remained on the High Court of Chancery when Pendleton was elevated to the new statutory Court of Appeals. From the date of Pendleton's appointment to the higher court to that of his death, more than one hundred and fifty cases were appealed from the High Court of Chancery to the Court of Appeals, and a majority of Wythe's decrees in those cases were modified or reversed. To a sensitive man like Wythe, who had put all his skill and lore into his opinions, this was unendurable, and he gave vent to his indignation in a volume of reports of his own. In it we have the novel spectacle of a judge of an inferior court setting down his own acid comments on the appellate court. Wythe was usually a mild man, one whom nearly everyone loved and respected, at whose approach, it is said, every dog would wag its tail. It is hard to associate the genial side of the man with the printed volume of his decisions, so inexcusably acrimonious and lacking in restraint. This true scholar and upright judge, before whom all litigants were said to be transformed into mere A's and B's, so that there could be no favoritism among them, lost his sense of balance and propriety where the appellate court was concerned—or, more properly, Pendleton, for he was the guiding spirit and mouthpiece of the Court—and it is hard to escape the conclusion that Wythe had come to look upon Pendleton as his enemy.

But Pendleton soon became too concerned with other matters to give much thought to Wythe. The new government was not developing along the lines which he and Madison had visualized. It was a federal government based upon the strength of the states—not a national government growing out of their weakness—that both had desired; and it was such a government that they had assured their doubting people they were bringing into being. But Congress persisted in enacting legislation calculated to strengthen its position, and the executive hesitated to use his veto power.[35] Under the leadership of Alexander Hamilton, the movement culminated in the Alien and Sedition Acts.[36] A memorial of condemnation of these measures was introduced in a number of Virginia counties, including Caroline where, under Pendleton's sponsorship, it received the customary majority given those measures advocated by the traditional leaders of the county. However, it did not fare so well in other states; for tradition has it that in some of the legislative bodies the resolutions were not laid *on* the table, but were thrown *under* the table. Pendleton returned to the attack through the medium of articles in the public press, and the battle was on. Whatever his age, or station, or past services, the author had stepped into the arena of partisan politics and must be destroyed. Everywhere the Administration's guns were turned upon him, first of all by the Virginia Federalists themselves as they rushed gallantly into print behind a shield of anonymity. Among Pendleton's opponents, as of old, stood Patrick Henry, who, despite his avowed principles, had embraced the Alien and Sedition Acts. Only the hand of death averted the tragic scene that awaited Henry in the House where friends of a lifetime stood ready to confound him by the very arguments with which of old he had trumpeted the cause of liberty.

The battle raged through the first year of the new century,[37] and was terminated only by the election of Jefferson to the Presidency,[38] which broke the power of the Federalists. Jefferson's rise to power assured a temporary cessation of certain abuses in government, but Pendleton wished to seize such an opportunity to amend the Federal Constitution, so as to lessen abuses of power when the government came again into selfish hands. Already he visualized the dangerous power of the Senate because it was not confined to legislation, and because of the power of the President to control legislation by his power to reward subservient legislators by appointment to office. Already it was clear that second-rate Senators would be able to purchase seats upon the Supreme Court of the United States by blindly serving the President rather than the people who had placed them in office. He made a number of specific suggestions for amendments to the Federal Constitution to guard against these evils; but, as so often happens when the immediate danger is past, his warnings went unheeded.

Again Pendleton returned to the Bench, where he was soon confronted

34. Pendleton's associates on the court were almost equally colorful. Of William Fleming, Mr. Mays says: "He made no show of erudition, going a year or two at a time without citing a single authority in his opinions." And some idea of the vigor of Paul Carrington may be gained from the fact that a few weeks before his sixty-fifth birthday he married a young lady of 15, whereupon one of the local newspapers commented, "From the firm constitution of the Honorable Judge, their friends and relations have further hopes of seeing the family encreased by the fruit of this union."

35. Washington wrote to Pendleton: "You do me no more than Justice when you suppose that from motives of respect to the Legislature (and I might add from my interpretation of the Constitution) I give my signature to many Bills with which my Judgment is at a variance. In declaring this, however, I allude to no particular Act. From the nature of the Constitution, I must approve all the parts of a Bill, or reject it in toto."

36. The Sedition Bill, as originally drawn, declared the French people, with whom we were at peace, enemies of America. Even Hamilton was so dumbfounded by the temerity of his disciples that he had to force them to tone it down.

37. Which also saw the suppression of a Negro uprising in Virginia, detected in advance due to the strange circumstance that instead of flocking to town, as was usual on Saturdays, every Negro seen on the road was heading away from Richmond.

38. Jefferson carried Virginia, or rather its electors, for strong men were brought forth as presidential electors in those days. And, although the election was close, it was no fault of Jefferson's friends in Virginia that the election was tossed finally into the House of Representatives.

with a vexing question: Could the Episcopal Church constitutionally be deprived of its land holdings by legislative action? Wythe had held that it could. Pendleton had become reconciled to the absence of an established church, but he did feel that the cause of religion would not best be served by voluntary contributions, and he approved a plan for a general tax to support religious teachers, each taxpayer to designate his beneficiary. In this a bare majority of the Court of Appeals joined him; but there was a new post-Revolution generation, represented on the Court by Spencer Roane, which felt otherwise. In the judicial discussions, the child of the Revolution grew vehement, for technical as were his legal arguments, the motivating thought behind them was Roane's conception of the logic of the Revolution itself. Since the older judges were devoted to the Church, their emotions, too, were involved; and they could hardly have been pleased at the exaggeration to which Roane's warmth had led him. However, when the opinion day arrived the conservative view still had the most adherents by one on the Court; but when the judges prepared to mount the bench, Pendleton was not among them. Soon word reached the courthouse that he had died in his sleep the night before. In his room was found, done in his beautiful unmistakable hand, his opinion reversing Wythe, a manuscript which had almost become the law of the land, but was now only an incident of history.

As the heat of controversy cooled, the principal figures emerged in their true form; and soon even Patrick Henry was recognized as having been opposed to Pendleton only in point of view, not in fundamental concept. Soon death and time would mellow their rivalry, and people, remembering their contributions in true perspective, would lift their glasses to "The Memory of Patrick Henry and Edmund Pendleton". One of the early biographers, not of Pendleton but of Jefferson, made what remains the most accurate analysis of his views:

> It was not because he wanted liberality, or was blindly attached to ancient things, that he was sometimes unwilling to carry the process of reform to the fartherest verge of what was right in the abstract, but from a spirit of conciliation to those whose interests or prejudices were about to be assailed. . . . It was not, in short, that he was prompted by his own narrow views, but because he was indulgent and forbearing to such views in others.

This coincides with the words of Pendleton himself, in an acute piece of self-analysis which occurs in a brief autobiography which John Mays reprints in an appendix:

> I opposed and endeavored to moderate the violent and fiery, who were plunging us into rash measures, and had the happiness to find a majority of all the public bodies confirming my sentiments; which, I believe, was the cornerstone of our success. Although I so long, and to so high a degree, experienced the favor of my country, I had always some enemies; few indeed, and I had the consolation to believe that their enmity was unprovoked, as I was ever unable to guess the cause, unless it was my refusing to go lengths with them, as their partizan.

Of Mr. Mays' biography, it is unnecessary to say more. The award to it of the Pulitizer Prize was neither unexpected nor undeserved. The foregoing will give some idea of the material with which he deals. Much of it is told in his words, which may convey some of the flavor which he imparts to the whole. But where there is space here only to sketch in the background,[39] Mr. Mays delineates it with loving detail. The book has been compared to Freeman's *Washington*, and while Pendleton's contribution was by no means as spectacular as Washington's the comparison is not inapt. For Mr. Mays has fitted another piece into the mosaic which constitutes our history and which, while perhaps not as large or as glittering as some, is equally important in creating the picture as a whole.

39. The administration of the Robinson estate, mentioned here only in passing, is dealt with exhaustively; and a list of creditors of the estate, representing primary source material of the greatest historical importance, is given in an appendix.

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